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page

Memorandum Opinion, IN THE Federal Communications Commission (F.C.C.)
dum Opinion, Order, Authorization & Certification MATTER OF WILTEL INTERNATIONAL, File No. I-T-C-94-227 INC.

Application for the provision for authority Of. direct services between MCI TELECOMMUNICATIONS CORP. to acquire and operate satellite the United and cable States and Cuba facilities

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

LDDS COMMUNICATIONS, INC. File No. I-T-C-94-229

SPRINT COMMUNICATIONS COMPANY L.P.

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

IDB WORLDCOM SERVICES, INC. File No. I-T-C-94-260

Applications for provision of direct authority to services between the United States acquire DA 94-1098 and operate satellite facilities and Cuba 20 he

Adopted: October 4, 1994
Released: October 5, 1994

the Chief, International Facilities Division:

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

to use either the INTELSAT and proposed satellite facilities transmission circuits on an occasional use Atlantic Ocean Region (AOR) satellite at 33 satellite. authorized U.S. international fixed-satellite earth station and Cuba. of international message telephone service ("IMTS") and other switched services 64-kbps digital satellite voice-grade [FN1] and for WilTel In an amendment to its requests international private authority to acquire by lease from Comsat and operate and/or an Intersputnik satellite. will be application, WilTel also line service between the United States and at 335 <<degrees>> E.L., located circuits, basis, provided via the 35 <<degrees>> E.L., for between an and up to requests appropriately two satellite WilTel states the the the INTELSAT appropriate flexibility provision video 120 the

MCI requests authority to satellite circuits [FN3] | between t e by the lease Mount from Comsat and op Jackson, Virginia operate earth 150 station

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

- its ("Columbia") satellites in addition to the INTELSAT circuits with the private station 64-kbps satellite circuits between an appropriately authorized east coast earth application, LDDS and an appropriate INTELSAT-AOR satellite for the provision of IMTS line services requests authority to acquire LDDS also requests authority to use interchangeably the Intersputnik, between the United States and Cuba. or Columbia by lease Communication from Comsat satellites. Corporation In an amendment and operate 150 and
- York, by using its own facilities. Sprint proposes to use these facilities furnish all of Sprint's authorized services, including IMTS, between the Uni States and Cuba. earth station located voice-grade satellite circuits 5. Sprint <<degrees>> requests E.L., connecting with its operating center in New authority at Shenandoah, to acquire by lease from Comsat and operate 120 [FN4] between the Orion international Standard Andoah, Virginia and the INTELSAT-AOR satellite at York, New United to
- ("Statsionar 4"), together with the necessary connecting facilities between earth station and an operating center in New York, New York, for the provisi 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. Cuba. ion the
- 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 minute accounting rate point to an earth station in Cuba. Initially, under agreements, EMTELCUBA agreed with each applicant to a service within one year. EMTELCUBA of Cuba, to provide the matching for switched traffic, and a \$4.85they have reached an agreement ching facilities from the satel 50/50 split of a the terms /50 split of a \$1.20 pe surcharge per call for satellites' of the midper
- the United States and Cuba, and their proposed services will help meet that demand within the regulatory framework established by the Cuban Democracy Act 1992 (22 U.S.C. § 6002 et seq.).

 9. AT & T filed a petition to deny against each of these applications stati: that because of the \$4.85 surcharge per call for collect calls, the applicant immediate and large demand exists their applications because it telecommunications between the United States and Cuba. The applicants state that the will for public result direct telecommunications interest would be served by in the rapid introduction of They state that an services between a grant of new line 0 S
- Settlements Policy ("ISP") and carriers negotiate to achieve administrations.
 AT & T's petitions. 9. AT & T filed a petition to deny against each of these applications s that because of the \$4.85 surcharge per call for collect calls, the appliaccounting rate agreements with EMTELCUBA conflict with the International petition. [FN7] All of ("ISP") and with the directive of the] All of the applicants They unanimously agreed to cost-based accounting rates with foreign plicants individually filed oppositions to agreed that an ISP waiver under § 64.1001 Commission that stating

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force, their proposed arrangements do not and no ISP waiver is required. In additi of the Commission's Rules is not required because AT & T's operating agree with the Cuban administration expired nearly four years ago. Therefore, applicants argue that because AT & T's operating agreement is no longer in surcharge per call is Policy Guidelines required. In addition, WilTel, MCI, and LDDS argue tha do not prohibit collect surcharges, and that the \$4.85 appropriate and not excessive for collect calls. depart from any current arrangements, agreemen the

DISCUSSION

- June and the and 5) carriers shall report the number of circuits activated by facility on modes settlements must not permitted." [FN8] 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 the proposals services necessary to deliver a signal to Cuba; 4) proposals must es of communications already in place between the United States and \$1.20 per minute accounting rate; 30 In a letter dated July 22, 1993, the U.S. Department of State informed and December] Among the policy guidelines must have the potential to be 31 of each year and on the be more favorable to Cuba than the current 50/50 split of accounting rate; 3) proposals must be limited to equipment operational within a are the following requirements: one-year anniversary of year; Cuba; utilize 2)
- 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. notification by the Commission in the Federal Register.
 11. In accordance with the Policy Guidelines, we forw above-captioned applications to the Department of State other international norms and practices, relevant ITU Recommendations, and consider a provision. objection to our approval of the IMTS those countries having a surcharge. average rate Policy Guidelines except for the \$4.85 surcharge per call for collect calls. T Department found that the proposed surcharge was unreasonable and unjustified. observed that the surcharge The Department of State, for all provision that countries proposed surcharge far in the region and the arge. Therefore, the . Մhowever, did state that applications without the \$4.85 surcharge determined by us exceeded the approximately \$.60 of State and requested that forwarded copies of the prevalent \$1.00 rate Department of State had no to be based on it would favorably costs,
- reasonable and justified. provides for either no applications dismiss applications, we concluded that we would not probecause of the agreements with EMTELCUBA for the In light of the Department of State's letter, and our own review of the applications, applications, we gave the applicants the opportunity to amend their to reflect a new agreement renegotiated with EMTELCUBA that either no surcharge for collect calls, or a surcharge that was [FN10] process the applications as \$4.85 surcharge. Rather filed than
- the surcharge operating other On September 6, call agreement with EMTELCUBA that reflected a reduction in of \$4.85 per call for collect calls to \$1.00 per call. and four applicants similarly amended their applications to reflect surcharge. We requested their a 1994, LDDS e sent o amended its copies S S reflected a reduction in the to of these whether t application to include these amendments to new surcharges the Department week proposed new were ש n L

(Publication page references are not available for this document.)

call generally be reduced or eliminated in the State notes, Recommendations, and current surcharge rates in the appears consistent with international norms Department of compliance with the Policy letter from the Department surcharge was in however, State stated that the Policy that it hopes that this and other surcharge rates will compliance with the Policy of State expressing its views that the new \$1.00 liance with the Policy Guidelines. [FN12] The Guidelines. the new proposed surcharge of \$1.00 tional norms and practices, relevant future. region. 1994, The Department ITU per cal eived per 0 f

eliminated in the future. the new originating country of providing the service. collect calls is within the range of surcharges that other concludes the contract caribbean region have for these types of calls, and reflects State that the five applicants in compliance with the Policy G Department of surcharge is Upon our own review of the applications, reasonable and ry of providing the service. Accordingly, we find that this reasonable and justified. It is our desire, however, as it State's, that this surcharge eventually be reduced or Policy Guidelines. amended operating agreements with EMTELC uidelines. The \$1.00 per call surcharge We that other countries in the agree with the the the Department with EMTELCUBA cost to the 92 are გ |-

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. were based on surcharge rge

requirement that facilities already be in existence and be limited existing earth station facilities, we find these proposals Intersputnik, obtained. initiate service applicants state the 16. We 6. We find that a grant of the above-captioned five a public interest subject to the conditions set forth lications are consistent with the Executive Branch's services necessary To the extent o the extent the applicants propose to use the INTELSAT, and Columbia satellite facilities and appropriately authorized shortly after all requisite regulatory that they will initiate service within to deliver മ signal to Cuba applications will one year, and expect approvals have been below. Policy Guidelines. The satisfy These to e quipment serve to

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

satellite WilTel's operating center, connecting with similar circuits between the station and the INTELSAT-AOR satellite at 335 <<degrees>> E.L., together with the necessary domestic connecting facilities between the earth station and between an up to two satellite video transmission **ം** lease from Comsat and operate up to 120 64-kbps and an earth station in Cuba, furnished by EMTELCUBA; lieu of the INTELSAT circuits, establish up to 120 64 appropriately authorized U.S. international fixed-satellite earth circuits on an occasional satellite use basis circuits, 20 and

ope. necessary domestic connecting facilities between the earth station and WilTel's earth station and an appropriate circuits between an appropriately authorized U.S. international fixed-satellite rating station in lieu of the center, commention in Cuba, connecting octing with similar furnished by EMTELC Intersputnik satellite, together with by EMTELCUBA; establish up to 120 64-kbps circuits between and the satellite and

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- and switched services (including ritched 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 in either (a) facsimile, 9 (d) above to provide IMTS and ther
- and authorized to:
- Mount Jackson, Viitogether with the station in Cuba, furnished by EMTELCUBA; Texas, connecting with station and MCI's a. lease from Comsat and operate 150 64-kbps satellite circuits between the it Jackson, Virginia earth station and an appropriate INTELSAT-AOR satellite ther with the necessary connecting facilities between the Mt. Jackson earth operating similar circuits between the centers at Pottstown, and Pennsylvania and San Antonio, satellite and an earth
- including IMTS, between the b. use the above facilities to United States and Cuba. authorized services
- and LDDS 19. IT IS FURTHER ORDERED that application File No. is authorized to: I-T-C-94-N N 9 SH GRANTED
- a. lease from Comsat and operate 150 64-kbps satellite circuits between appropriately authorized U.S. international fixed-satellite earth station appropriate INTELSAT-AOR satellite, together with the necessary domestic connecting facilities between the earth station and LDDS's operating cent. connecting with similar circucuba, furnished by EMTELCUBA; circuits between the satellite and an earth station 20 between an center and an in
- and with the necessary domestic connecting LDDS's operating center, earth circuits, an earth station in Cuba, furnished by EMTELCUBA; c. use the facilities in either (a) or (b) above **.** station and an appropriate Intersputnik or Columbia satellite, in lieu of between the INTELSAT circuits, establish up to 150 64-kbps satellite an appropriately authorized U.S. international fixed-satellite connecting with similar circuits between the satellite facilities between and the earth station together and
- line to provide SIMI and privat
- and ne services between the United States and Cuba. 20. IT IS FURTHER ORDERED that application File No. 1d Sprint is authorized to: I-T-C-94-247 SIGRANTED
- the connecting facilities between its operating center in New international Standard A earth
 INTELSAT-AOR satellite at 335 which can derive 120 virtual voice-grade circuits, Orion earth station, connecting with similar circuits ٠ م an earth earth station in Cuba, furn: use the above facilities to lease from Comsat and operate one furnished by EMTELCUBA; <<degrees>> E.L., station located at [H 1 circuit (30 64-kbps at Shenandoah, Virginia and together with the necessary between the and between the satellite York, New York, Orion circuits and the
- including IMTS, **р** above facilities to provide all of S between the United States and Cuba. of Sprint's authori zed service
- and IDB is authorized to: IS FURTHER ORDERED that application File No. I-T-C-9 4 N 60 S_{H}
- 64-kbps circuits), which can derive 120 virtual voice-grade circappropriately authorized U.S. international fixed-satellite eart appropriate INTELSAT-AOR satellite, together with the necessary station in appropriate initial content of an operating center facilities between the earth station and an operating center Cuba, from Comsat with similar furnished by and and operate one 2 Mbps can derive 120 virtual circuits b EMTELCUBA; 20 channel (an earth station and circuits, between 円 | | and n circuit New York, connecting an New 30 an an

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- by EMTELCUBA; similar circuits between the satellite 口円 earth station and ("Statsionar 4"), earth station and cuits, between b. in lieu of circuit or 30 station and an operating center in New York, an appropriately authorized U.S. international fixed-sate the Intersputnik satellite located at 14 << degrees>> >>> the INTELSAT circuits, establish up to one 2 Mbps channel (64-kbps circuits), which can derive 120 virtual voice-grade together with the necessary connecting facilities between the and an earth station in Cuba, furnished New York, connecting with atellit W.L.
- between c. use the the United States facilities and Cuba. in either (a) or (b) above to provide IMTS service
- 2. IT IS FURTHER ORDERED that the services authorized herein must 5
- implemented within one year from that WilTel, MCI, LDDS, Sprint and IDB the date of release of this order.
- 50/50 with EMTELCUBA the \$1.20 per minute accounting rate for the IMT 24. IT IS FURTHER ORDERED that the surcharge agreed to between the and EMTELCUBA for received collect calls shall be no greater than \$1. 23. IT IS FURTHER ORDERED 50/50 with EMTELCUBA the \$1. B shall split
 IMTS services applicant S

greater than \$1.00

per

- the before June 30, and call. 25. notification of the IT IS S FURTHER ORDERED that the applicants shall submit repore 30, and December 31 of each year, and on the one-year cation of the grant of these applications in the Federal the numbers of circuits activated by facility. reports anniversary Registe on Ò
- applicants indicating 26. SI TI of Treasury and Commerce. FURTHER ORDERED that this authorization is subject to the obtaining all necessary licenses and authorizations from
- Commission determines that the continuation of communi States and Cuba is no longer in the national interest. hearing in the event the Department of State or the Federal Communications Departments 27. IT IS FURTHER ORDERED that this continuation of communications between the order is subject to revocation without Uni $\dot{\Box}$
- private petition for reconsideration pending. (1991), Order International equivalent to end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so be Commission upon a finding that its correspondents afford resale opportuni these 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' tariff state state that their customers may not--connect private lines profacilities to the public switched network at either the U.S. IT IS FURTHER ORDERED that our authorization for the applicants to provide lines is limited to the provision of Accounting Rates, Phase II, First Report and Order, on Reconsideration and Third Further NPRM, 7 FCCRcd those available under U.S. law, services, unless authorized to do so by such private in accordance private lines provided over lines with Regulation of opportunities only between 7 FCCRcd 559 7927 (1992), 20 foreign the the
- authorized in this order before offering services to applicants shall 47 SI TI U.S.C. FURTHER ORDERED that, 203, file and Part and have in effect a tariff 61 pursuant to Section of the Commission's the 203 of the Rules, 47 for the services public. the C.F.R. Communications Part 61,
- operating agreements their correspondents correspondents IT IS FURTHER ORDERED that the applicants within 30 days of their ex days execution, 20 shall file copies their c parent/affilia
 and shall other 0 É otherwise te

(Publication page references are not available for this document

Comply with the LLLL 47 (Commission's Rules, 47 (Commission's FURTHER ORD) requirements C.F.R. § 43. 43.51. contained in Section 4 ω 51 of. the

- Commission's overseas telecommunications 47 ORDERED C.F.R. traffic that (V) 43.61. the applicants fic required by shall fi file file annual 43.61 of the repo rt 0
- United States application for any s Rules, FURTHER and Cuba. additional circuits ORDERED that the applicants they propose to shall file establish മ S ection between N .4 the
- conditions Acceptance of this authorization shall set forth herein. Ьe deemed acceptance of. the
- filed þу SI TI AT & T ARE FURTHER ORDERED DENIED. that the Petit ions to Deny against Ω ach appli 'n an
- Rules Section 1. Rules and is effective upon adoption. on 1.106 or applications for revieway be filed within 30 days of p This authorization is issued review under pursuant public Petitions notice Section Section ons for 1 0 f reconsideration under n 1.115 of the Commission' this order (see Section 0 2 91 Οf the Commis ssion'

FEDERAL COMMUNICATIONS 1.4(b)(2)). COMMIS Ω ION

George S. Li Chief, Inter International Facilit iles Divi S

Common Carrier Bureau

optic FN2. FN1. on WilTel's Because this cable WilTel's request to use these facilities until such t cable facilities will be available for WilTel's use. WilTel also requests authority to undersea cable, CUBUS-1, that has These services include undersea cable, CUBUS-1, that has been pr landing license of WilTel Undersea Cable, s cable landing license has yet to be request to use these facilities unti facsimile, dat provide service been proposed in the application for a Cable, Inc., FCC File No. SCL-94-0 מ and video granted, we will defer such time that we are transmission to Cuba via the fiber service acting assured or a 002

FN3. ability MCI of 5:1, thereby allowing MCI to states these circuits are bearer circuits with potentially derive as many മ compression as S 50 Ö

circuits.

- virtual circuits request Sprint voice-grade circuits. in a are initially equivalent to nitially requesced to the Commission on October 3, letter to the Commission on October 3, in 1994, stating that turn, circuits, Ca Ħ but der ive clarif 120 Q μ. \leftarrow
- FN5. (an E-1 circuit) IDB states these are the operating at Ф number o umber of circuits of compression ratio derived of 4:1. J. mo one N Mbps chann Ō H

FN6. See infra ¶ 10.

- (expansion of traditional focus of the ISP the adverse effect of above-cost levels of adverse S 0 0 Regulation of International Accounting Rates, 6 runcu of International Accounting Rates, 6 runcu of freventing whipsawing 2 (1991) to include Ω 32 ĸ 1 (e) K Ø and
- and Director, Department of State to FCC Letter dated July Bureau of 22, 22, 1993, from Richard C. Beaird, International Communications and 1993, Chairman James H. Quello Acting U.S. Information Coordina Policy, \vdash 0
- Coordinator, dated May Bureau of 23, International Communications 1994, from Richard C. Beaird, and Senior Deputy U.S Information Polic Υ.

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Department Letter of State dated to FCC (Chairman Reed / 29, 1994 fro from Hundt Wendell На ırri S As S ř. Ø tant Bureau

(Publication page references are not available for this document.)

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. Bureau Chief/International, Common Chief/International, See Letters dated September 9 Common Carrier Bureau, to all five applicants.
and 16, 1994 from Wendell Harri
Carrier Bureau, to Richard C. Be Harris, Assistant C. Beaird, Senior

Coordinator, Bureau of Department of State to International Communications and Information Policy, U.S.

FCC Chairman Reed Hundt.

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

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