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11 F.C.C.R. 6830, 11 FCC Rcd. 6830, 1996 WL 74021 (F.C.C.)

Federal Communications Commission (F.C.C.)

Authorization and Certificate  
IN RE APPLICATION OF AMSC SUBSIDIARY  
CORPORATION

File No:

**ITC**

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**95**

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**280**

FOR AUTHORITY TO PROVIDE INCIDENTAL  
TRANSBORDER AND INTERNATIONAL  
MARITIME COMMUNICATIONS

DA 96-214

Adopted: February 21, 1996

Released: February 22, 1996

**\*6830** By the Chief, International Bureau:

**Introduction**

1. By this Order, we grant the application of AMSC Subsidiary Corporation for authority, under Section 214 of the Communications Act of 1934, as amended, to use its domestic Mobile Satellite Service ("MSS") system to provide service to ships within the technical service area of AMSC's satellite system. We deny AMSC's request for a waiver of international tariff filing requirements for shore-to-ship calls originating in the United States and ship-to-shore calls terminating in the United States.

**Background**

2. AMSC currently has authority to construct,

launch, and operate a domestic MSS system to provide land, aeronautical, and maritime mobile satellite service to the United States.<sup>[FN1]</sup> **\*6831** The Commission conditioned this authorization on AMSC building an MSS system capable of providing service to all fifty states, Puerto Rico, the U.S. Virgin Islands, and coastal areas up to 200 miles offshore. To meet these requirements, AMSC constructed a satellite which necessarily has a footprint capable of providing service to areas beyond these authorized service areas.

3. AMSC launched its first satellite, AMSC-1, on April 7, 1995. AMSC has determined that many of its current and potential maritime customers, which include the U.S. Coast Guard as well as cruise ships and recreational vessels, travel beyond 200 miles of U.S. coastal waters, but within AMSC's satellite footprint or coverage area. AMSC requests authority to use its domestic MSS system to provide international maritime MSS throughout its entire coverage area.

4. Loral/Qualcomm Partnership, L.P. (LQP), Comsat Corporation, and CruisePhone, Inc. filed comments. AMSC and LQP filed Reply Comments. Comsat asserts that the Administrative Procedure Act and competitive equity require us to process AMSC's application simultaneously with Comsat's application to provide domestic land and aeronautical MSS.<sup>[FN2]</sup> Comsat requests that we permit AMSC to expand its service area only if we contemporaneously grant its application. LQP contends that AMSC's application should be held in abeyance until: (1) AMSC provides information on what frequencies it plans to use to provide the extended service; and (2) spectrum issues in the Lower L-band have been resolved.<sup>[FN3]</sup> CruisePhone, a reseller of satellite capacity provided by AMSC, asserts that grant of AMSC's application will increase competition and offer advantages over the services presently available via use of Inmarsat facilities.

**Discussion**

5. We find that it is in the public interest to grant AMSC's application for authority to provide international maritime mobile satellite service. The Commission recently eliminated regulatory distinctions between U.S.-licensed domestic and international satellite systems. In doing so, it determined that removal of geographic barriers on U.S.-licensed satellite systems would promote increased competition, increase consumer choices, and results in information infrastructure development.<sup>[FN4]</sup> Grant of AMSC's application will promote these goals by enhancing \*6832 AMSC's ability to compete in the MSS market for maritime services and permitting a more flexible use of spectrum resources. In addition, grant of AMSC's application will permit its maritime customers to receive continuous communications service using the same equipment throughout AMSC's coverage area. AMSC will continue to operate only on the frequencies it is currently authorized to use.

6. Comsat contends that since Comsat's and AMSC's applications are "inextricably related," the Commission must consider them simultaneously pursuant to the Administrative Procedure Act. Specifically, Comsat argues that since both applications are inextricably related to competition, a decision to deny Comsat's application would be potentially inconsistent with the public policy reasons used to grant AMSC's application. While we agree that both applications pertain to competition in the MSS area, there are considerations that warrant treating the two applications separately. Comsat's application to provide domestic LMSS and AMSS raises a number of legal, policy, and technical issues that do not arise in the context of AMSC's application. Comsat's request to use Inmarsat capacity to serve U.S. domestic customers raises the continuing spectrum problem that has existed in the L-band for several years. The available spectrum appears insufficient to meet all stated requirements for the North American coverage area. Inmarsat, Canada, Mexico, Russia, and the United States all seek to operate MSS systems in the L-band over North America. Before authorizing the domestic

operation of another system in the L-band, we must consider the potential impact any authorization would have on these spectrum coordination discussions. Comsat's request also raises issues concerning the scope of authority under the Maritime Satellite Act.<sup>[FN5]</sup> These and other related issues concerning Comsat's status,<sup>[FN6]</sup> raised in our DISCO proceeding, must be resolved in the context of other proceedings prior to authorizing Comsat to provide aeronautical and land mobile satellite services in the United States. We do not believe, however, that the public interest would be served by delaying AMSC's provision of international maritime mobile satellite service pending resolution of the issues related to the Comsat Application.

7. We deny AMSC's request for waiver of the Commission's international tariff filing requirements for shore-to-ship calls originating in the United States and ship-to-shore calls terminating in the United States. AMSC states that the rates, terms, and conditions for ships traveling outside its currently authorized service area will be identical to those for ships traveling \*6833 inside its currently authorized service area, for which no tariff is required.<sup>[FN7]</sup> AMSC asserts that filing an international tariff would be a wasteful and unnecessary burden on AMSC in light of the limited applicability of its terms. Comsat opposes AMSC's request and asserts that its international tariff would have more than "limited applicability" since AMSC will be authorized to serve the Caribbean, a significant source of international maritime mobile satellite revenues. In addition, Comsat argues that we should resolve these types of tariff issues in a rulemaking, rather than in the context of AMSC's application.

8. The Commission has previously determined that forbearance of tariff requirements for commercial mobile radio service (CMRS) providers in the U.S. domestic market serves the public interest.<sup>[FN8]</sup> AMSC, as a CMRS provider, is still required to file a tariffs for international maritime mobile satellite services. The Commission may exercise its discretion to waive a rule where there is "good cause" to

do so,<sup>[FN9]</sup> if the particular facts would make strict compliance inconsistent with the public interest.<sup>[FN10]</sup> Any grant of a waiver must be based on articulated, reasonable standards that are predictable, workable, and not susceptible to discriminatory application.<sup>[FN11]</sup> AMSC has not demonstrated special circumstances that justify waiving the Commission's international tariff requirements. We conclude that AMSC has not yet provided sufficient information to show that requiring it to file an international tariff would cause undue hardship, would be inequitable, or would impair effective implementation of the Commission's overall policy objectives.

### Conclusion

9. We hereby grant the application of AMSC Subsidiary Corporation to use its MSS system to expand service to ships within the technical service area of its system. This authorization will permit AMSC to provide its customers with continuous communications service, using the same equipment as they travel throughout AMSC's coverage area.

### \*6834 Ordering Clauses

10. IT IS ORDERED that, upon consideration of AMSC's application, filed pursuant Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant thereof. Accordingly, IT IS ORDERED that the application of AMSC to provide international maritime mobile satellite communications, as outlined in AMSC's application, is GRANTED.

11. IT IS FURTHER ORDERED that AMSC's request for a waiver from the Commission's international tariff filing requirements IS DENIED.

12. IT IS FURTHER ORDERED that, pursuant to Section 203 of the Communications Act, [47 U.S.C. Section 203](#), and Part 61 of the Commission's Rules, [47 C.F.R. Part 61](#), AMSC shall FILE tariffs with the Commission consistent with this decision.

13. IT IS FURTHER ORDERED that, AMSC will prepare the necessary submissions for consultation, by the U.S. Party, in accordance with Article 8 of the Inmarsat Convention as requested by the Commission.

14. This Order is issued under Section 0.261 of the Commission's Rules, [47 C.F.R. Section 0.261](#), and is effective upon adoption.

### FEDERAL COMMUNICATIONS COMMISSION

Scott Blake Harris  
Chief  
International Bureau

FN1. *See* In the Matter of Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, *Memorandum Opinion, Order and Authorization*, 4 F.C.C. Rcd. 6041 (1989), *rev'd in part and remanded sub nom. Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428 (D.C. Cir. 1991). Final Decision on Remand, 7 F.C.C. Rcd. 266 (1992), *aff'd*, 983 F.2d 275 (D.C. Cir. 1993). *See also* In the Matter of AMSC Subsidiary Corporation Applications to Modify Space Station Authorizations in the Mobile Satellite Service, *Memorandum Opinion and Order*, 8 F.C.C. Rcd. 4040 (1993) (approving the modification of AMSC-1).

FN2. *See* Comsat Comments at 14 (filed May 11, 1995). Comsat maritime service via Inmarsat satellites is global, including the Caribbean. Comsat has applied to provide service to the United States as well. Application File No. ITC 95-341 (filed May 11, 1995).

FN3. *See* Loral/Qualcomm Comments at 3 (filed May 11, 1995).

FN4. *See* In the Matter of Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite

Systems and DBSC Petition for Declaratory Rule-making Regarding the Use of Transponders to provide International DBS Service, IB Docket No. 95-41 and File No. DABS-88-08/94-13DR FCC 96-14, (Released January 22, 1996) (“DISCO”). In the Report and Order, we also indicated that we would address issues involving Comsat's provision of domestic service in a forthcoming Notice of Proposed Rulemaking.

FN5. [47 U.S.C. Sections 751-757](#).

FN6. *See* Comments of Orion Networks Systems, Inc. at 4 (filed June 8, 1995); AT&T Corp. at 16 (filed June 8, 1995); and Columbia Communications Corporation at 6 (filed June 8, 1995).

FN7. *See* AMSC's Reply Comments, at 18 (filed May 24, 1995). AMSC only requests a waiver for shore-to-ship calls originating in the U.S. and ship-to-shore calls terminating in the U.S.

FN8. *See* In the Matter of Implementation of Sections 3(N) and 332 of the Communications Act Regulatory Treatment of Mobile Services, [Second Report and Order](#), 9 F.C.C.Rcd 1411 (1994).

FN9. *See*, Section 1.3 of the Commission's Rules, [47 C.F.R. § 1.3](#).

FN10. [WAIT Radio v. FCC](#), 418 F.2d 1153, 1159 (D.C. Cir. 1969).

FN11. [Northeast Cellular Telephone Co. v. F.C.C.](#), 897 F.2d 1164, 1166 (D.C. Cir. 1990).

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