Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of	)	
	)	
AT&T CORPORATION	)	File No. ITC-MSC-19981229-00905
	)	Application
for Authority under	)	
Section 214 of the Communications	)	
Act, as amended, to Discontinue	)	
The Offering of High Seas Service	)	
And to Close its Three Radio Coast	)	
Stations (KMI, WOM and WOO)	)	

ORDER ON RECONSIDERATION

Adopted: July 9, 2001 Released: July 10, 2001

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order we deny petitions seeking reconsideration of the International Bureau's 1999 *Discontinuance Order*[1] and reaffirm the grant of authority to AT&T Corporation (AT&T) to close three public coast stations and discontinue its High Seas Radiotelephone Service (High Seas Service)[2] previously offered over those facilities. We conclude that the petitioners do not offer any new facts or evidence that was not before the Bureau at the time we issued the *Discontinuance Order*; nor do petitioners demonstrate a material error or omission in the *Discontinuance Order*. Accordingly, as explained below, we deny their petitions and reaffirm the *Discontinuance Order*.

II. BACKGROUND

[1] *AT&T Corporation, Application for Authority under Section 214 of* the *Communications, as Amended, to Discontinue the Offering of High Seas Service and to Close its Three Radio Coast Stations (KMI, WOM and WOO),* Memorandum Opinion and Order, 14 FCC Rcd 13,225 (1999) (*Discontinuance Order*).

[2] High Seas Service was a High Frequency (HF) radiotelephone service AT&T offered between three public coast stations in the United States and ships in the Atlantic and Pacific Oceans and the Gulf of Mexico.

2. On December 29, 1998, AT&T filed an application for authority to discontinue its offer of High Seas Service.[3] In the *Discontinuance Order,* the Bureau found that AT&T had shown that it was losing money on the offer of High Seas Service and that there was no compelling need to require it to continue to offer the service.[4] The Bureau also found that users of the service had several viable alternatives available, including satellite-based telecommunications services as well as offerings of HF radio service by other companies.[5]

3. On September 8, 1999, David E. Hoxeng (Hoxeng) filed a Petition for Reconsideration of the *Discontinuance Order.*[6] On September 9, 1999, MarSal Marine L.C. (MarSal) filed a pleading styled a "Motion for Reconsideration" seeking the same remedy.[7] On September 21, 1999, AT&T filed an Opposition to the Hoxeng and MarSal petitions.[8] On October 7, 1999, Hoxeng filed a reply to the AT&T Opposition.[9] In this Order, we rule on the pending petitions for resonsideration.

4. In addition to his petition for reconsideration, Hoxeng filed an Emergency Motion for

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[3] AT&T Corporation, Application for Authority to Discontinue High Seas Service, File No. ITC-MSC-19981229-00905 (filed December 29, 1998).

[4] 14 FCC Rcd at 13,228-9.

[5] *Id*. at 13,229-31.

[6] David E. Hoxeng, Petition for Reconsideration (filed September 9, 1999). On September 10, 1999, Hoxeng filed a Motion for Acceptance of Errata to Petition for Reconsideration asking us to accept an amended copy of his Petition that corrected certain typographical and citation errors in his original petition. David E. Hoxeng, Motion for Acceptance of Errata to Petition for Reconsideration (Hoxeng Petition) (filed September 10, 1999). The motion noted that both it and the originally filed petition have been served on AT&T. Because the two petitions are essentially identical, and because the corrected petition will make it easier for us to address Hoxeng's arguments, we grant the Hoxeng motion. Citations to the Hoxeng Petition in this Order refer to the September 10 Prtition.

[7] MarSal Marine L.C., Motion for Reconsideration (MarSal Petition) (filed September 9, 1999). Although styled as a "Motion for Reconsideration," MarSal's pleading constitutes a petition for reconsideration under the Commission's rules, *see* 47 C.F.R. § 1.106, and we shall treat it as such. On September 15, 1999, MarSal filed an "Errata to Motion for Reconsideration" to correct its prior Motion for Reconsideration by submitting a Certificate of Service showing that it had served AT&T with a copy of the Motion at the time it filed with the Commission.

[8] AT&T Corporation, Opposition to Petitions for Reconsideration (AT&T Opposition) (filed September 21, 1999).

[9] David E. Hoxeng, Reply to Opposition to Petitions for Reconsideration (Hoxeng Reply) (filed on October 7, 1999).

Stay (Stay Motion) of the *Discontinuance Order*.[10] On October 8, 1999, AT&T filed an Opposition to Hoxeng's Stay Motion.[11] By separate Order, released October 13, 1999, we denied Hoxeng's Stay Motion, stating that Petitioner had failed to show that he was likely to prevail on the merits.[12] However, because some of the arguments raised in the Stay Motion, and AT&T's Opposition thereto, cast additional light on the issues raised in the petitions for reconsideration, we consider those arguments where relevant.

III. DISCUSSION

5. Petitioners challenge four aspects of the *Discontinuance Order*. First, Hoxeng and MarSal challenge the sufficiency of the cost information on which the Bureau concluded that requiring AT&T to continue to offer High Seas Service would subject AT&T to economic harm. Second, Hoxeng and MarSal challenge the Bureau's conclusion that current AT&T customers will have adequate alternatives to High Seas Service. Third, petitioners argue that, due to limitations on the coverage areas of the various alternative HF radiotelephone providers, significant numbers of current AT&T customers will be deprived of reliable HF communications and that this would represent a significant safety risk to such users. Finally, Hoxeng argues that the Bureau should have designated the AT&T application for an oral hearing.[13]

A. Cost Issue

6. **Background.** In the *Discontinuance Order*, we found that AT&T was incurring significant financial losses in offering High Seas Service and that it would be a hardship to require AT&T to continue to offer the service indefinitely under those circumstances.[14] AT&T

[10] David E. Hoxeng, Emergency Motion for Stay (filed October 4, 1999).

[11] AT&T Corporation, Opposition to Emergency Motion for Stay (filed October 7, 1999). Also on October 8, 1999, Hoxeng filed an unauthorized pleading styled as a "Reply to [AT&T's] Opposition to Emergency Motion for Stay" (Reply to AT&T Stay Opposition). Section 1.45(d) of the Commission's rules, 47 C.F.R. § 1.45(d), provides that replies to oppositions to petitions for stay are not permitted. However, because it includes arguments that bear upon the issues in this reconsideration, we shall consider it.

[12] *AT&T Corp*., 14 FCC Rcd 17,266 (1999).

[13] MarSal did not specifically challenge the Bureau's decision not to hold an oral hearing, but did request in its petition that the Bureau hold such a hearing. MarSal Petition at 3.

[14] 14 FCC Rcd at 13,229.

supported its application for discontinuance with information showing the decline in volumes and revenues that had occurred between May 1997 and March 1999.[15] AT&T also filed a letter on August 4, 1999, that stated that it had experienced a loss on the service in 1998 of more than $5 million and that it projected a greater loss for 1999.[16] Additionally, in its opposition to Hoxeng's Emergency Stay Petition, AT&T included a document entitled "High Seas Radiotelephone Fully Allocated Income Statement" (Income Statement) that provided greater detail with respect to the loss figure in its August 4, 1999, letter.[17]

7. **Discussion.** We reaffirm the finding in the *Discontinuance Order* that AT&T has demonstrated that it was incurring a significant loss on the offer of High Seas Service. Hoxeng asserts that AT&T's cost information is deficient under the Commission's decision in its 1978 *Public Coast Station Inquiry*.[18] Hoxeng argues that, under the holding in the *Public Coast Station Inquiry*, the Bureau should have required AT&T "to submit detailed financial statements with a sworn statement by its Certified Public Accountant."[19] Since its decision in the *Public Coast Station Inquiry*, however, the Commission has streamlined the regulations under which non-dominant carriers seek authority to discontinue service.[20] As a result, the *Public Coast Inquiry* no longer controls what a non-dominant carrier must submit under the current regulations, and, thus, provides no grounds on which to reconsider the finding that AT&T was incurring significant financial losses in providing High Seas Service.[21]

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[15] *See* Letter from Michael F. Del Casino, Regulatory Division Manager, AT&T, to Magalie Roman Salas, Secretary, FCC, dated May 6, 1999 (May 6, 1999 letter), p. 3 of attached *ex parte* materials.

[16] *See* Letter from Douglas W. Schoenberger, Government Affairs Director, AT&T, to Magalie Roman Salas, Secretary, FCC, dated August 4, 1999 (August 4, 1999 letter), at p.1.

[17] AT&T Opposition to Emergency Motion for Stay, Exhibit C.

[18] Hoxeng Petition at 8-9, citing *Inquiry into Problems of Public Coast Radiotelegraph Stations,* 67 FCC 2d 790, 799 (1978) (*Public Coast Station Inquiry*).

[19] Hoxeng Petition at 9. The *Public Coast Station Inquiry* concerned applications by a number of operators of public telegraph coast stations to close their stations. In acting on those applications, the Commission hired Advance Technology Systems, Inc. (ATS) to study the various applications. The language in paragraph 18, on which Hoxerng relies, states that the ATS study had shown that there was sufficiently wide variance between the cost information each of the applicants had submitted that the Commission could not conclude that the carriers had shown they were "suffering severe economic loss." 67 FCC 2d at 799.

[20] *See Streamlining the International Section 214 Authorization Process and Tariff Requirements*, 11 FCC Rcd 12,884, 12,904-5, 12,939 (1996). The Commission declared AT&T non-dominant for international services in *Motion of AT&T Corporation to Be Declared Non-Dominant for International Services*, 11 FCC Rcd 17,963 (1996).

[21] In any event, that order does not require carriers seeking discontinuance authority to have a CPA prepare its

8. We also are not persuaded by Hoxeng's arguments that AT&T's cost information is deficient because the reports that AT&T submitted are unsigned and did not indicate they were prepared by a certified public accountant. The procedures for applying for authority to discontinue a common carrier service do not establish any specific requirements regarding the contents of financial statements.[22] There is no rule that requires applicants to have a certified public accountant prepare cost information for submission in a Commission proceeding, nor does the Commission require applicants to submit affidavits or to swear to the truth of information they submit. The document in question was signed by AT&T's attorney and therefore is subject to Section 1.52 of the Commission's rules.[23] Furthermore, Hoxeng has not provided us with any reason to question the accuracy of any of the cost information that AT&T submitted or the truthfulness of any statements AT&T has made in this proceeding.

9. We agree with Hoxeng that the figures cited in the *Discontinuance Order* understate the revenue AT&T derived from High Seas Service, but this has no decisional relevance. The Order stated that, for the 12-month period from April 1998 through March 1999, AT&T's High Seas Service generated total revenues of $235,587. As Hoxeng correctly noted in his petition, calculations based on the materials submitted by AT&T show revenues during that period of $1,549,244. The figures contained in the Order were calculated using the materials AT&T submitted in its May 6, 1999, letter. However, we did not base our conclusion that AT&T had experienced a loss on High Seas Service on those figures. The revenue figure of $235,587 was not intended to support AT&T's claim of a loss of $5 million. Rather, the figure was intended merely to show that AT&T's High Seas revenues appeared to be declining over time. The conclusion that AT&T was incurring losses on High Seas Service was based on the figure AT&T submitted in its August 4, 1999, letter. In the Income Statement attached to its opposition to Hoxeng's stay motion, AT&T amplified upon the loss figure in its August 4, 1999, letter, showing it had experienced a 1998 loss $5,163,000 and a 1999 loss of $5,061,000.[24] As a result,

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submissions. It does not, in fact, specify the type of financial information such a carrier must submit. Rather, as is clear from footnote 34, the Commission merely directed the Common Carrier Bureau to study the issue of cost reporting and to determine the appropriate cost categories operators of coast stations should report. *See* 67 FCC 2d at 799, n. 34.

[22] *See* 47 C.F.R. § 63.19 (2000).

[23] 47 C.F.R. § 1.52. That rule does not require pleadings signed by an applicant's attorney to be verified or accompanied by an affidavit. Rather, it states that the attorney's signature represents a certificate that he or she has read the document and that, to the best of the attorney's knowledge, information and belief, there is good ground to support the statements in the document. The rule further provides that an attorney may be subjected to appropriate disciplinary action should he or she make false statements in a submission to the Commission.

[24] AT&T Opposition to Emergency Motion for Stay, Exhibit C.

the calculation did not affect the Bureau's conclusion that AT&T had shown a loss of approximately $5 million.[25]

10. We also are not persuaded by Hoxeng's argument in his Reply to AT&T Stay Opposition that the cost information in AT&T's Income Statement is deficient because it includes annual charges of approximately $2 million for depreciation.[26] It is reasonable for carriers to include allocations for depreciation in determining the costs associated with a service,[27] and Hoxeng has not provided any information that would suggest that the specific amount that AT&T charged for depreciation is unreasonable. Moreover, even were we to disallow the entire $2 million depreciation charge, AT&T's Income Statement would still show an annual loss of more than $3 million.[28] An annual loss of $3 million would still mean that AT&T was incurring a loss on High Seas Service and that requiring AT&T to continue providing the service would continue to place a financial burden on AT&T.[29]

11. Finally, we are not persuaded by Hoxeng's claim that AT&T violated the *ex parte* rules.[30] In his reply to AT&T's opposition, Hoxeng noted that AT&T claimed in its opposition that the $5 million loss figure in its August 4, 1999, letter summarized "substantial" financial information it had provided the Bureau staff at the May 6, 1999, meeting.[31] Hoxeng claims that this constitutes an admission that it violated the *ex parte* rules because its May 6, 1999, letter summarizing that meeting does not include any such cost information.[32] As required by our *ex parte* rules,[33] AT&T submitted letters disclosing its various meetings with the Bureau staff.[34] It is

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[25] 14 FCC Rcd at 13,229.

[26] Hoxeng Reply to AT&T Stay Opposition at 6. To be precise, the AT&T Income Statement shows a charge for depreciation of $2,078,000 in 1998 and $1,978,000 in 1999. AT&T Stay Opposition, Exhibit C.

[27] *See, e.g., Federal Power Company v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

[28] Specifically, the resultant loss figure for 1998 would be $3,085,000 ($5,163,000 less $2,078,000) and for 1999 would be $3,083,000 ($5,061,000 less $1,978,000).

[29] *See* 14 FCC Rcd at 13,229.

[30] 47 C.F.R. §§ 1.1200-16.

[31] AT&T Opposition at 5.

[32] Hoxeng Reply at 4-5.

[33] 47 C.F.R. at § 1.1206(b)(2).

[34] AT&T met with the staff on May 6, May 25, June 29, July 8 and July 16, 1999. *See* 14 FCC Rcd at 13,227.

true that most of AT&T's *ex parte* letters contained no information concerning the profitability of High Seas Service. AT&T's August 4, 1999, letter did, however, address that issue, stating that AT&T had experienced a loss in 1998 of approximately $5 million and that it was projecting a similar loss for 1999.[35] Hoxeng also argues[36] that AT&T violated the *ex parte* rules by failing to disclose in its *ex parte* letters information on its claim that it would need to invest $5 million to make High Seas Service "Y2K compliant." It is clear, however, from the *Discontinuance Order* that we did not base our decision to authorize AT&T to discontinue High Seas Service on the cost of making the service Y2K compliant, but upon the information AT&T provided showing a steadily declining customer base and a loss of $5 million per year.[37] We found AT&T's claimed loss to be sufficient to show economic harm justifying the grant of discontinuance authority. As a result, we need not consider whether High Seas Service was compliant with Y2K or whether the $5 million investment claimed by AT&T is reasonable and substantiated. We, thus, conclude that Hoxeng has not shown material error in our finding in the *Discontinuance Order* that AT&T would experience economic harm were we to require it to continue to offer High Seas Service indefinitely.

B. Sufficiency of Alternative Services

12. **Background**. The *Discontinuance Order* concluded that there are adequate alternative services available to users of High Seas Service such that granting AT&T authority to discontinue service would not prevent users from obtaining maritime communications service. We found that there are several alternatives to AT&T's High Seas Service including INMARSAT satellite-based services, AT&T's SeaCall service, and Iridium satellite-based global mobile telephone service.[38] The Order further noted that these services would require current users of AT&T's High Seas Service to make capital expenditures of varying amounts up to approximately $6,500 for an INMARSAT mobile satellite terminal.[39] The Order found that such expenditures are not substantially out of line with the $2,500 cost of an HF radio and concluded that such

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35 *See* AT&T's August 4, 1999, letter at p. 1.

36 Hoxeng Reply to AT&T Stay Opposition at p. 6. The term "Y2K compliant" refers to modifications to computer software that were necessary to allow computers to continue operating without interruption at the beginning of the year 2000 (Y2K).

37 *See* 14 FCC Rcd at 13,229.

38 *Id*.

39 *Id.*

services are, therefore, not too costly to be a reasonable alternative to HF radio service.[40] In addition, the Bureau found that vessels close to the coast of the United States could use cellular telephone service, VHF radiotelephone service and the services of the domestic American Mobile Satellite Corporation.[41] Finally, the Bureau found that users also have five alternative HF radio services that they can, for the most part, access without additional investment for new equipment: the HF services offered by one U.S. licensee, Mobile Marine Radio Co., and four foreign licensees, Stratos Mobile Networks, a Canadian carrier, Telia, a Swedish carrier, Telecom-Telegrafos Mexico (XDA), a Mexican carrier and Telstra, an Australian carrier.[42]

13. **Discussion.** We reaffirm the conclusion in the *Discontinuance Order* that users have adequate alternatives to AT&T's High Seas Service. Hoxeng and MarSal argue that the conclusion in the *Discontinuance Order* that users have adequate substitutes to High Seas Service was incorrect because the alternatives we found to exist--satellite-based radiotelephone services and alternative HF services--are not reasonably equivalent to AT&T's High Seas Service. Hoxeng argues that satellite-based services we cited are too costly for many users.[43] Hoxeng and MarSal also argue that the HF services provided by the five alternative providers do not provide as extensive a coverage as does AT&T's High Seas Service. MarSal argues that the three stations used for High Seas Service provide a more reliable coverage under varying propagation conditions than does any single station operated by the alternative providers. In his Stay Motion, Hoxeng challenged the adequacy of the alternative providers' coverage by including computer-generated graphs that purport to show three positions within the coverage AT&T's High Seas Service where it would be impossible to contact any of the five other providers.[44] Marsal further argues that it is much easier to obtain service from one provider, AT&T, rather than multiple providers, particularly because some are foreign-owned.[45] Hoxeng and MarSal also argue that, because one of the alternative providers, XDA, does not guarantee that all of its operators can speak English, its service is an inadequate substitute for AT&T service and that use of the phonetic alphabet to communicate with a non-English speaker is difficult or impossible.[46]

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40 *Id.*

41 *Id* at 13,233.

42 *Id* at 13,230.

43 Hoxeng Petition at 10-12.

44 Hoxeng Stay Motion, Attachments 1, 2 and 3.

45 MarSal Petition at 2.

46 Hoxeng Petition at 14-5; MarSal Petition at 2.

14. The arguments of Hoxeng and MarSal do not persuade us to change our finding that one or more of the alternative services identified in the *Discontinuance Order* will meet the needs of AT&T's High Seas Service subscribers. We continue to find that satellite-based communications service is a viable alternative to High Seas Service. The *Discontinuance Order* identified two such services: 1) AT&T's SeaCall service, offered over the INMARSAT satellite system, and 2) the Iridium satellite system, offered over a network of low earth orbit satellites.[47]

15. As discussed in *the Discontinuance Order*, the Commission has held that the mere fact that a substitute service costs more than a discontinued service, or that a customer must purchase new equipment to use it, does not render the substitute service nonviable.[48] The issue, therefore, is not whether customers must purchase satellite terminals in order to use satellite-based services, but whether the price for such terminals is so high that most users cannot afford to purchase them. As to the Inmarsat alternative, we do not agree with petitioners that the cost of purchasing the INMARSAT terminals is prohibitive. As to the AT&T SeaCall service option, the higher cost of SeaCall terminals is offset by the fact that AT&T levies substantially lower per-minute charges for SeaCall service than it did for High Seas Service.[49]

16. Hoxeng raises only one cost issue that was not directly addressed in the *Discontinuance Order*. Specifically, Hoxeng argues that the *Discontinuance Order* understated the cost for some users of High Seas Service to switch to satellite-based services because it failed to consider the approximately $1,200 those users had incurred in purchasing a special handset that was pretuned to the AT&T coast stations.[50] Hoxeng argues that AT&T's closure of High Seas Service would render the handset useless. Hoxeng contends that the cost these customers would incur in obtaining satellite-based service is even greater than the *Discontinuance Order* stated, because they would also lose the benefit of lower per-minute usage charges that AT&T

[47] 14 FCC Rcd at 13,229. Although Iridium went bankrupt, its assets were acquired by Iridium Satellite LLC, which is providing a similar service. *See* The New Iridium Launches Service, The Washington Post, April 2, 2001, at E1.

[48] 14 FCC Rcd at 13,230, citing *American Tel. and Tel. Co*., 63 FCC 2d 371 (1977).

[49] We noted that AT&T charged $15.39 to initiate a High Seas Service call, with a three-minute minimum, and $5.13 for additional minutes. Further, if the call is connected to the U.S. public switched telephone network, AT&T imposed an additional charge of $1.78 for the first three minutes and $.60 per minute thereafter. In contrast, AT&T charges $2.50 per minute for a call over SeaCall. Charges for INMARSAT-based services from other providers range from $2.20 to $3.50 per minute. *Discontinuance Order*, 14 FCC Rcd at 13,229.

[50] Hoxeng Petition at 10.

had charged purchasers of the handset.[51] With respect to the cost of the handset, we note that the amount spent represents a sunk cost that such purchasers cannot avoid. Customers who purchased their handsets several years ago have recovered some of that expenditure in the form of savings from reduced per-minute charges. For others, whose handsets were still under warranty at the time AT&T discontinued High Seas Service, AT&T promised to rebate a portion of the purchase price.[52]

17. Moreover, AT&T's High Seas Service customers need not subscribe to satellite-based services, but may continue to use their existing HF radio equipment with other HF service providers if they choose. As we noted in the *Discontinuance Order*, there are one U.S. and four foreign providers of HF radio service that collectively serve an area nearly identical to that of AT&T's High Seas Service.[53] We find nothing in petitioners' comments concerning the service coverage of these alternative providers that persuades us that the analysis in the *Discontinuance Order* on this point was incorrect. AT&T included in Exhibit B of its Opposition to Hoxeng's Stay Motion material obtained from the alternative providers that confirm that the coverage information AT&T included in its May 25, 1999, letter correctly stated their claimed service areas.[54] We do not believe that the graphs Hoxeng included with his Stay Motion[55] prove that the coverage area claimed by the providers is inaccurate. Hoxeng argues that the graphs show a point within the coverage area of each of the alternative providers where it would be impossible to contact such provider's coast station. As MarSal notes, however, the range of HF communications can vary from day to day and from season to season, depending upon atmospheric conditions, interference and other man-made radio noise.[56] We agree with AT&T that the submitted analyses prove only that on the particular date and time of the survey, a ship at that location would likely be able to reach AT&T but not one of the alternative providers.

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[51] For subscribers who purchased the special AT&T handset, AT&T reduced its regular $5.13 per minute usage rate to $1.29 per minute. *See* Hoxeng Petition at 10.

[52] *See* AT&T's August 4, 1999, letter at p. 4.

[53] 14 FCC Rcd at 13,230. *See also* Letter from Michael F. Del Casino, Regulatory Division Manager, AT&T, to Magalie Roman Salas, Secretary, FCC, dated May 25, 1999 (May 25, 1999, letter), p. 2 of attached *ex parte* materials.

[54] AT&T Opposition to Stay Motion, Exhibit B. AT&T included information from Mobile Marine Radio (pp. 1-8), Telstra (pp. 9-12), Stratos (pp.13-18), XDA (p. 19). In addition, Stockholm Radio notified Bureau staff by facsimile with information that confirms the coverge information in AT&T's May 25, 1999 letter. *See* Facsimile from Christer Tjäder, Duty Officer, Stockholm Radio, to John Copes, FCC Staff, dated July 27, 1999.

[55] *See* Hoxeng Stay Motion, Attachments 1, 2 and 3.

[56] MarSal Petition at 1-2.

Similarly, at another location on the same day, or at the same location on another day, the ship might be able to contact one of the alternative providers but not AT&T. As even Petitioners have acknowledged, one cannot expect to be able to communicate with every station every day.[57] Thus, Hoxeng's evidence does not prove that the alternative providers have misstated their areas of coverage or negate the Bureau's conclusion that the five alternative providers collectively offer service that is a reasonable substitute for AT&T's High Seas Service for most users.[58] Moreover, if users do not like the alternative HF providers, they can subscribe to one of the satellite-based services.

18. We note, however, that satellite-based services, which are provided via geostationary satellites orbiting the Earth at the equator, cannot provide full service near the North and South poles.[59] For those relatively few vessels that venture into such waters, called in International Maritime Organization (IMO) terms "Sea area A4,"[60] HF radio is the only viable

[57] *See* MarSal Petition at 1. Hoxeng's Petition for Reconsideration also recognizes that coverage area under "optimal" propagation conditions may differ from actual coverage under other conditions. *See* Hoxeng Petition at 14. While this observation was offered to critique the claimed service coverage of the alternative HF providers, it would be true of any provider, including AT&T.

[58] We are also not persuaded by Hoxeng's arguments that U.S. users will not be able to use XDA because some of the XDA radio operators do not speak English. In a telephone conversation with John Copes of the FCC Staff on July 23, 1999, the manager of XDA, Carlos Garcia stated that many foreign vessel operators, who do not speak Spanish or English, successfully use XDA through use of the phonetic alphabet to establish connection to the telephone network. A U.S. vessel operating in international waters cannot expect that every coast station with which it wishes to communicate will have English-speaking operators. Certainly, the fact that some XDA operators do not speak English would not be sufficient grounds for requiring AT&T to incur losses in operating its High Seas Service.

[59] The *Discontinuance Order* stated that Inmarsat satellite service is not available beyond 80 degrees north or 80 degrees south latitude. *See* 14 FCC Rcd at 13,230. Hoxeng correctly notes that INMARSAT does not guarantee service beyond 70 degrees north or 70 south latitude. Although INMARSAT does not guarantee 100 percent coverage beyond 70 degrees, a text on communications satellite systems states that geostationary satellites can be used up to 81.25 degrees north or south. *See* James Martin, Communications Satellite Systems, at p. 49, published by Prentice-Hall, Inc., 1978. The text also notes that there is little other than polar ice beyond this point. In any event, the difference between 70 and 80 degrees would not require us to change our conclusion that Inmarsat-based service is a viable substitute for High Seas Service. There is very little open water north of 70 degrees north latitude. Basically, there are three areas of open water above 70 degrees north latitude, the area north of the north slope of Alaska, the area on either side of Greenland (Baffin Bay and the Norwegian Sea) and an area north of Russia (comprising portions of the Kara, Laptev and Barents Seas). In the Southern Hemisphere, there are only two areas of open water below 70 degrees south latitude, a small portion of the Weddell Sea and a portion of the Ross Sea.

[60] The IMO, an international body composed of the major maritime nations, including the United States, defines four ocean areas for purposes of its regulations regarding ship-to-shore communications. *See* International Maritime Organization, International Convention for Safety of Life at Sea of 1974, as amended (SOLAS), Regulation 2.1 (Edition London 1997). SOLAS Regulation 2.1.12 defines " Sea area A1" as the are within the radiotelephone coverage of a Very High Frequency (VHF) coast station refers (about 20-25 miles). Regulation

means of communications. The issue of coverage of Sea Area A4 is, however, mostly irrelevant to the question of AT&T's discontinuing High Seas Service. In materials AT&T provided to the Bureau staff, AT&T included a map of the service coverage of its three US coast stations.[61] That map shows that one of its stations, WOO in New Jersey, serves a small portion of the north polar region above Greenland and Northern Europe, and another of its stations, KMI in California, serves a small area of the south polar region south of Australia. None of its stations serves the vast bulk of the waters around the North Polar icecap or the waters off the coast of Antarctica. Comparing the map of AT&T coverage with the map of the coverage of the five alternative suppliers in AT&T's May 25, 1999, letter shows that Stockholm Radio provides nearly the same coverage of the north polar region as did AT&T and that Telstra provides nearly the same coverage of the south polar region as did AT&T. It is apparent from the service coverage maps that neither AT&T nor the five alternative providers were intended to provide a comprehensive coverage of the polar regions. As a result, the closure of AT&T's High Seas Service will not deprive vessels operating in the Polar Regions of any ability to communicate that they previously had.

C. Safety Issue

19. **Background.** The *Discontinuance Order* concluded that AT&T's discontinuance of High Seas Service would not have a significant effect on the safety of ships at sea.[62] It noted that the responsibility of the United States with respect to maritime communications is contained in the International Convention for Safety of Life at Sea (SOLAS)[63] to which the United States is a Signatory.[64] Under the SOLAS the primary means to ensure maritime safety is the Global

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2.1.13 defines Sea area A2 as the area beyond Sea area A1 that is within the radiotelephone coverage of at least one Medium Frequency (MF) coast station (roughly 100 miles). Regulation 2.1.14 defines Sea area A3 as the area beyond Sea areas A1 and A2 that is within the coverage of an Inmarsat geostationary satellite. Regulation 2.1.15 defines Sea area A4 as the area outside sea areas A1, A2 and A3 (roughly the area beyond 70 degrees north or 70 degrees south latitude.

[61] Letter from Michael F. Del Casino, Regulatory Division Manager, AT&T to Magalie Roman Salas, Secretary, FCC, dated July 19, 1999, p.2.

[62] 14 FCC Rcd at 13,233-4.

[63] *See* note 60, *supra*. Requirements pertaining to radio communications are contained in Chapter IV of SOLAS. The SOLAS regulations apply to all commercial passenger ships and to other commercial vessels over 100 tons. Private vessels are not required to carry radios that comply with SOLAS.

[64] 14 FCC Rcd at 13,233.

Maritime Distress and Safety System (GMDSS),[65] which does not rely upon commercial HF radio coast stations such as those of AT&T. GMDSS differs from the older system of distress communications in that it is fully automated, seeking to ensure that distress communications can be received at any hour of the day or night.

20. Commercial HF radio coast stations have never been charged with the responsibility for maritime safety communications. In the United States, that function has been the responsibility of the U.S. Coast Guard. The Coast Guard does not monitor commercial HF frequencies. Rather, as the *Discontinuance Order* noted, the Coast Guard monitors an international distress channel at 2182 KHz (2.182 MHz). This distress channel will be available to HF users until they switch to GMDSS. [66] For these reasons, the Bureau concluded that the discontinuance of High Seas Service would not unduly harm the operation of the GMDSS or prevent the United States from meeting its obligations under SOLAS. Although the *Discontinuance Order* noted that customers have used AT&T's High Seas Service to place distress calls, and to place calls for assistance that do not rise to the level of distress calls,[67] it concluded that discontinuance of High Seas Service would not prevent customers from continuing to use HF for such calls. Rather, it noted that users could rely on other commercial HF services for this function.

21. **Discussion**. Hoxeng and MarSal both argue that discontinuance of High Seas Service would adversely affect maritime safety, particularly during hurricane season.[68] Hoxeng argues that SOLAS does not require vessels to monitor the 2182 KHz distress channel and is therefore of little value to most vessels in distress. Further, while Hoxeng acknowledges that the U.S. Coast Guard will continue to monitor the 2182 KHz channel, he notes that the range of communications on that frequency is "only a few hundred miles" and argues that many vessels

[65] GMDSS is an automated maritime distress communications system. The Commission's rules implementing GMDSS in the United States are set forth in 47 C.F.R. Part 80, Subpart W.

[66] The 2182 KHz distress channel is technically within the MF rather than the HF band. Because it is so close to the HF band many people consider it an HF frequency and most HF transceivers can send and receive at 2182 KHz. SOLAS only required the monitoring of 2182 KHz until February 1, 1999, when the GMDSS became effective, but the U.S. Coast Guard has announced that it will continue to monitor the frequency until 2005 to ensure tht U.S. HF users have time to switch to GMDSS.

[67] In addition to calls for immediate assistance, Hoxeng notes that users also need to communicate to get medical aid from a shore-based doctor, to get advice from a shore-based mechanics, to contact the Coast Guard when they are out of range of a Cost Guard coast station and to report suspicious activity to the Coast Guard and Customs. Hoxeng Opposition to AT&T's Application to Discontinue High Seas Service, 2 (filed June 30, 1999).

[68] Hoxeng Petition at 16-9; MarSal Petition at 2.

will not be able to reach the Coast Guard.[69] Both petitioners argue that, because many boats are not required to have GMDSS equipment, commercial HF stations such as those of AT&T are often the only way for vessels to make their distress calls heard. Hoxeng further notes that even if vessels are equipped with satellite terminals, they cannot use them beyond 70° North or South Latitude.

22. We find that petitioners have not provided any new information that would cause us to change the conclusion in the *Discontinuance Order* that cessation of AT&T's High Seas Service will not unduly compromise maritime safety communications or undermine the commitments of the United States under the SOLAS agreement. Petitioners have acknowledged that the *Discontinuance Order* was correct that international regulations do not rely on commercial HF radio services for maritime safety communications but upon the GMDSS.[70] Petitioners do not challenge the finding in the *Discontinuance Order* that there is no international distress channel in the HF band, nor our finding that ships and shore stations are not required to monitor the HF band for distress calls.[71] Until 1999 the international radiotelephone distress channel was the MF channel at 2182 KHz, on which most HF transceivers can send and receive.[72] Since 1999, however, SOLAS no longer requires ships to monitor the 2182 KHz distress channel and has, thus, reduced its efficacy as a means of placing distress calls. This fact, however, has no direct relevance to the discontinuance of AT&T's High Seas Service because international regulations have never required ships to monitor commercial HF frequencies for distress calls. The *Discontinuance Order* noted that ships navigating within the range of the U.S. Coast Guard stations will have some protection because the Coast Guard has announced that it will continue to monitor 2182 KHz until 2005.[73]

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[69] Hoxeng Petition at 17.

[70] *Id.*

[71] SOLAS Regulation 7.1.1 requires every ship to carry a VHF transceiver with Digital Selective Calling (DSC) that allows the vessel automatically to monitor VHF channel 70 (156.525 MHz) for distress calls. SOLAS, pp 380-1. DSC refers to digital radio equipment that allows the radio set automatically to monitor a selected frequency or frequencies and to notify the operator if it detects a signal on that frequency. Because VHF has a range of approximately 20 miles, a ship that sails no more than 20 miles off the coast (defined by SOLAS as Sea area A1) need carry only this equipment. Regulation 9.1 requires ships that sail into Sea area A2, defined as the area beyond area A1 that is within the coverage of an MF radio station with DSC (approximately 100 miles), also to carry an MF radio (with DSC) capable of maintaining a continuous DSC watch on the frequency 2187.5 KHz. SOLAS, pp. 383-4. Regulation 10.1 requires ships that sail into Sea area A3, defined as the area beyond areas A1 and A2 that is within the coverage on an Inmarsat satellite, to carry an Inmarsat satellite terminal. SOLAS, p. 384-5.

[72] Solas Convention, Regulation 7.2, p. 381.

[73] 14 FCC Rcd at 13,234, n.31.

23. The *Discontinuance Order* recognized that users of High Seas Service have in fact used it to send distress calls and other safety communications.[74] It noted, however, that discontinuance of AT&T's High Seas Service would not leave users of HF radio services without the ability to use their HF radios to send distress calls.[75] Such users can subscribe to one or more of the five other providers of HF radiotelephone service. Those services can carry distress and safety calls in the same way that AT&T does.

24. Comprehensive international maritime safety communications will only be provided via the GMDSS system. Users who wish to protect themselves fully can subscribe to a satellite-based radiotelephone service and acquire the equipment needed to participate in the GMDSS. Those who do not wish to participate in GMDSS can, of course continue to use their HF radios to communicate with HF coast stations other than those of AT&T. The *Discontinuance Order* noted that users who do not feel the need for the full panoply of GMDSS service can use their existing HF radios to access parts of the GMDSS if they purchase DSC equipment.[76] Because such equipment can be purchased for approximately $1,000 to $2,000, they can take advantage of the automated monitoring features of the GMDSS while saving the cost of a satellite terminal.

C. Hearing Issue

25. **Background.** The Bureau placed AT&T's application for discontinuance authority on public notice on January 22, 1999.[77] Twenty-five members of the public, including MarSal and Hoxeng, and one employee of AT&T filed comments. Prior to issuance of the *Discontinuance Order*, no one requested the Commission to hold an oral hearing.

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74 *Id*. at 13,234.

75 *Id.*

76 *Id.*

77 Public Notice, Report No. TEL-D-0001, released January 22, 1999. AT&T filed its request for discontinuance authority under Section 63.71 of the rules, which relate to discontinuance of domestic service. We determined, however, that AT&T's request comes under Section 63.19 of the rules, which relate to discontinuance of international services by a non-dominant carrier. Although Section 63.19 does not require carriers requesting discontinuance authority to obtain prior authorization, but only to give its customers 60-days notice of the planned discontinuance and to notify the Commission when it has done so, we decided, on our own motion, to place AT&T's application on public notice and to allow interested persons to file comments on it.

26. **Discussion.** We are not persuaded that we should have set the AT&T discontinuance request for oral hearing prior to adopting the *Discontinuance Order*.[78] Hoxeng argues that we should have set the matter for hearing because Section 309 (d) of the Act[79] obligates us to set an application under Title III for hearing whenever a party has filed a petition to deny the application that contains specific allegations sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest, or that the Commission lacks sufficient data on which to make an informed decision.[80] Further, Hoxeng asserts that the Communications Act generally requires the Commission to hold a hearing or formal inquiry where substantial and material facts have been presented that need to be resolved.[81] AT&T did not address this issue in its opposition to the Hoxeng petition.

27. We find that Hoxeng's reliance upon Section 309 (d) is misplaced. Section 309 (d) states that the filing of a petition to deny an application under Section 309 (d) renders it subject to Section 309 (e). Section 309 (e) states that it applies to applications that come under Section 308 of the Act.[82] Section 308, in turn, states that it covers requests by an applicant for the grant, modification or renewal of a construction permit or station license for a radio station.[83] AT&T's application in this matter does not request a grant, modification or renewal of any radio station license. Indeed, AT&T did not request any action under Section 308 or any other provision of Title III, but authority under Section 214(a) of the Act to discontinue its offer of High Seas Service on a common carrier basis.

28. Carrier requests for authority to discontinue common carrier service come under Section 214 even in cases where, as here, the carrier also must hold a license under Title III.[84]

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[78] Marsal's motion requested, without elaboration, that the Commission prospectively order a hearing on this matter. MarSal Petition at 3. Hoxeng, however, challenged the Bureau's *Discontinuance Order* because the Commission had not held a hearing before issuing the Order. Hoxeng Petition at 19-20.

[79] 47 U.S.C. § 309(d).

[80] Hoxeng Petition at 19, citing *U.S. v. FCC (SBS)* No. 77-1249, 652 F.2d 72 (D.C. Cir. 1980).

[81] Hoxeng Petition at 19, citing 47 U.S.C. §§ 309(d)(2), (e) and *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 397 (D.C. Cir. 1985); *Anti-Defamation League v. FCC*, 403 F.2d 169, 171 (1968); and *Applications of Stockholders of CBS and Westinghouse Electric Corporation*, 11 FCC Rcd 3733, 3738-9 (1995).

[82] 47 U.S.C. § 309 (e).

[83] *See* 47 U.S.C. § 308 (a).

[84] *See* 47 U.S.C. § 214 (a). Indeed, in cases where the applicant requests authority to provide a common

We recognize that AT&T would, after being granted discontinuance authority, close its stations and return to the Commission the station licenses under which it operated the service.[85] Section 308, however, does not require AT&T to file an application for authority to surrender a radio station license. As a result, we conclude that nothing in Section 309(d) would obligate the Commission to hold a hearing on AT&T's Section 214 application.

29. Under Section 214, the Bureau is not legally obligated to order an oral hearing on the AT&T application, whether or not someone has opposed the application.[86] Nor do we find that the Administrative Procedure Act (APA) would separately require us to hold an oral hearing on the AT&T application. Actions under Section 214(a) to grant or deny authorizations constitute "adjudications" within the meaning of the Administrative Procedure Act (APA).[87] Section 554 (a) of the APA, relating to adjudications, states that the hearing requirement it details applies to "adjudications required by statute to be determined on the record after opportunity for agency hearing."[88] As noted above, Section 214 (a) does not require a hearing, let alone a hearing "on the record." While courts have held that a statute need not contain the wording of Section 554 (a) verbatim to trigger the applicability of Section 554,[89] the absence of any hearing requirement gives little support to a claim that Section 214 requires use of the formal procedures

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carrier service by means of radio, the Commission has always issued a separate authorization under Section 214 and a license for the necessary radio facilities under Section 308.

[85] Indeed, by letter dated October 13, 1999, AT&T notified the Commission that it was discontinuing High Seas Service and returned to the Commission all licenses used by its three coast stations.

[86] Section 214 (a), the subsection under which the Commission acts on applications for authority to discontinue service, does not mention a hearing of any kind. *See* 47 U.S.C. § 214 (a). *See also ITT World Communications Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979); *Western Union International*, 76 FCC 2d 166 (1980), *aff'd sub nom. Western Union Int'l v. FCC*, 673 F.2d 539 (1982).

[87] 5 U.S.C. §§ 551(6)-(9). Subsection 551 (7) states that an adjudication "means agency process for the formulation of an order." Subsection (6) states that an order "means the whole or part of a final disposition . . . of an agency in a matter other than a rule making but including licensing." Subsection (8) states that a license "includes the whole or any part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission." Subsection (9) states that licensing "includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license." An action under Section 214(a) is an adjudication under these definitions because it is the process under which the Commission issues an order granting a carrier permission to discontinue service.

[88] 5 U.S.C. § 554 (a).

[89] *See Seacoast Anti-Pollution League v. Costle*, 572 F.2d 872 (1st Cir. 1978), citing *United States v. Florida East Coast Railway*, 410 U.S. 224, 225 (1973), where the Supreme Court rejected such an extreme reading in the more informal context of rulemaking.

of Section 554. The fact that Congress did not in Section 214 require an oral hearing in discontinuance proceedings is evidence that Congress was leaving it to the discretion of the Commission to decide what procedure to use.[90] Here, the Commission has provided adequate notice and opportunity for comment through the procedures that the Bureau employed**.**

IV. CONCLUSION

30. For the reasons discussed above, we find that neither Petitioner has presented any basis for concluding that the *Discontinuance Order* was wrongly decided or that we should reopen the issue of AT&T's authorization to discontinue its High Seas Service. We therefore affirm our prior conclusion to grant AT&T authorization to discontinue its High Seas Service.

[90] Courts have recognized that "absent constitutional constraints or extremely compelling circumstances the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties," *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978), citing *FCC v. Schreiber*, 381 U.S. 279, 290 (1965) and *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940).

V. ORDERING CLAUSES

31. Accordingly, IT IS ORDERED that the petitions for reconsideration filed by David E. Hoxeng and MarSal Marine L.C. are hereby DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau