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Domestic Facilities Division  
Satellite Radio Branch

OCT 11 1990

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
 )  
American Satellite Company )  
d/b/a Contel ASC )  
 )  
Authorization to Construct, )  
Launch and Operate Contelsat-1 )

61-DSS-EXT-90

File Nos. 1801/1802/  
~~1803-DSS-MP/ML-89~~

PETITION TO DENY

Pursuant to Section 21.30 of the Commission's Rules, 47 C.F.R. § 21.30, American Telephone and Telegraph Company ("AT&T") hereby petitions to deny the Application of American Satellite Company d/b/a Contel ASC ("Contel"), dated August 30, 1990, for a one-year delay in the date by which Contel is authorized to begin construction of its Contelsat-1 satellite.

The Commission's "milestone" dates, which it typically requires as conditions of satellite licenses issued under Sections 308, 309 and 319 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 308, 309, 319, are designed to "prevent[] orbital locations from being 'warehoused' by licensees who have not yet decided whether to proceed with their plans." MCI

Communications Corp., 2 FCC Rcd. 233 (1987), at ¶ 5.

Contel requests a one-year extension of time to begin construction, precisely because the impending merger of Contel's parent company with GTE Corporation makes it uncertain whether it will proceed with construction of Contelsat-1 or not.\* Contel's Application (at 2 n.3) also indicates that Contel has apparently not yet decided on a satellite manufacturer or even issued an RFP for formal proposals from satellite manufacturers -- even though its license presently requires that construction was to have begun in August 1990. Contel nonetheless seeks to maintain its exclusive orbital slot assignment for a

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\* Contel's application states:

"Since the resulting corporation [after the merger] will be heavily involved in the satellite business, Contel ASC expects that the resulting entity will require additional satellite capacity in the 1990's and that the sound design and orbital location of Contelsat-1 will make this satellite the logical candidate for fulfilling those requirements. However, as the merger agreement was only just recently signed on August 7, 1990, firm decisions concerning the space segment requirements of the resulting entity cannot be made by August 31." (Contel Application, at 2 n.5, emphasis added.)

"In light of the uncertainty regarding the satellite requirements of the resulting company, making such financial and technical commitments at this time [for construction of the Contelsat-1] could hinder the resulting entity in its ability to provide high quality, cost-efficient services to the public." (Id., at 2.)

further year while it decides whether to proceed. This is classic "warehousing", which is directly contrary to the Commission's announced policies.\*

In order to prevent such orbital slot warehousing, the Commission has traditionally granted milestone delays only "when delay in implementation is due to circumstances beyond the control of the licensee." MCI Communications Corp., supra, at ¶ 5. Contel concedes that it does not meet that standard (Application at 3-4) and instead attempts to rely on Hughes Communications Galaxy DA 90-780, Order and Authorization (released June 6, 1990), in which the Commission granted a short delay where satellite construction had already been commenced and the licensee's commitment to launch was assured.\*\* Contel's reliance on Hughes is misplaced, because Contel, unlike the licensee in Hughes, has not yet commenced construction, and indeed seeks to postpone commencing construction precisely for the purpose of deciding whether to construct the satellite at all. As the Commission has stated, extension of milestone dates for reasons like these that are not beyond the licensee's control is

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\* See, e.g., MCI Communications Corp., supra,

\*\* See also, American Telephone and Telegraph Company, DA 90-1221, Order and Authorization (released September 19, 1990), ¶ 17 (two-month delay in construction completion and launch granted where applicant had already expended construction funds and was committed to launch).

generally not permitted, in order to "prevent orbital locations from being held by licensees who have not yet decided whether to proceed with their plans, [to] the exclusion of others who would use that location."\*

Contrary to Contel's contention (Application at 4-5), other satellite operators have a need for additional orbital positions, especially for "hybrid" locations such as the one assigned to Contelsat-1.\*\* For example, AT&T's TELSTAR 403 "hybrid" satellite is presently authorized as a ground spare, but has not been given launch authorization. AT&T is evaluating whether to apply to launch TELSTAR 403. Any such application would be hampered because there is presently no unassigned "hybrid" location in the orbital arc from which a satellite can "see" all of the continental United States. AT&T may apply for authorization to use the orbital position at 83° W.L. presently assigned for Contelsat-1,

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\* American Telephone and Telegraph Company, supra, at ¶ 16.

\*\* A "hybrid" satellite location is one that is available for transmissions in both the C and Ku Bands of spectrum. Hybrid satellites are the most economical for many applications. However, because of the number of orbital locations that have been allocated to satellites which are authorized for only C Band or Ku Band domestic communications, only a few orbital locations remain which are possible for "hybrid" satellites, and all of those "hybrid" locations have been assigned. Thus, Contel's request to (in effect) "warehouse" a hybrid location is even more burdensome than a request to "warehouse" a general orbital location would have been.

if it becomes available. Alternatively, the availability of this orbital location may make it possible for other satellite operators to request a change in their assigned locations, thereby freeing a different location for AT&T. Moreover, enforcement of the Commission's policy against warehousing may result in further slots becoming available, as other satellite operators who have not met their "milestone" commitments are also required to relinquish their unused orbital assignments.

Accordingly, the Commission should deny Contel's requested milestone delay. Because the current August 1990 date for commencement of construction of Contelsat-1 has passed and Contel has not yet commenced construction, the Commission should now declare that Contel is in violation of its license conditions, that the Contel's license is null and void, and that the position at 83° W.L. is available for general applications. MCI Communications Corp., supra, ¶¶ 8, 11. If, at some future

time, Contel decides that it wishes to build and launch a communications satellite, it can submit an application for a license.

Respectfully submitted,  
AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By /s/ Francine J. Berry  
Francine J. Berry  
David P. Condit  
Richard F. Hope

Its Attorneys

295 North Maple Avenue  
Room 3244J1  
Basking Ridge, New Jersey 07920

Dated: October 11, 1990

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, hereby certify that a true copy the foregoing "Petition to Deny" was served this 11th day of October, 1990 by first class mail, postage prepaid, upon the parties listed below:

\*Richard M. Firestone, Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, D.C. 20554

Joan M. Griffin, Esq.  
American Satellite Company d/b/a  
Contel ASC  
Columbia Square  
555 Thirteenth Street, N.W.  
Suite 480 West  
Washington, D.C. 20004-1109

/s/ Ann Marie Abrahamson  
Ann Marie Abrahamson

\* Indicates hand delivery service.