

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

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DEC 20 1990

Federal Communications Commission
Office of the Secretary

In re Applications of)
)
NATIONAL EXCHANGE SATELLITE, INC.)
)
For Authority to Construct, Launch)
and Operate Space Stations in the)
Domestic Fixed-Satellite Service)

File Nos. 4/5-DSS-EXT-90

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DEC 26 1990

To: Chief, Common Carrier Bureau

Domestic Facilities Division
Satellite Radio Branch

REPLY TO OPPOSITION TO
REQUEST FOR EXTENSION OF TIME

National Exchange Satellite, Inc. ("NEXSAT") hereby replies to the Opposition to Request for Extension of Time ("Opposition") filed by General Instrument Corporation ("GIC") on December 12, 1990. The Opposition challenges NEXSAT's request for an extension of time within which to commence construction of the SpotNet satellites. See Letter from Henry Goldberg to Donna R. Searcy, dated October 31, 1990 ("Request"). As is demonstrated below, there is no merit to GIC's position: It has no standing to file its Opposition, which, in any event, is unrelated to the merits of NEXSAT's Request and is intended merely to question the Commission's uniform satellite spacing policy.

I. GIC HAS NO STANDING TO OPPOSE NEXSAT'S REQUEST.

In its Public Notice, Report No. 1025, released November 21, 1990, at 2, the Commission requested comments from "interested parties" on the merits of NEXSAT's Request. By its own admission, GIC does not qualify as a "party in interest" under Title III of the Communications Act of 1934, as amended ("the

Act"), 47 U.S.C. § 301, et seq, pursuant to which the SpotNet construction permits ("CP") were awarded, see National Exchange Satellite, Inc. 3 FCC Rcd. 6992 (1988) ("Original Assignment Order"), because the sole stated basis for GIC's Opposition is its concern for "any Commission decision" that involves -- however tangentially -- the Commission's 2° orbital spacing policy adopted in Licensing of Space Stations in the Domestic Fixed Satellite Service, 54 R.R.2d 577 (1983) ("2° Spacing"). GIC apparently supports a modification of the 2° spacing policy, although, as it concedes, no petition for rulemaking raising the issue has ever been filed with the Commission, although GIC apparently intends to file one. See n.1, Opposition at 1.

Put simply, GIC cannot identify any legally cognizable injury it would suffer were NEXSAT's Request to be granted. The Request implicates the 2° spacing policy only in the sense that the orbital positions allocated for the SpotNet satellites were awarded consistently with that policy. The continued existence of the 2° spacing policy is irrelevant to whether the public interest would be served by extending the SpotNet construction milestones. See, e.g., Original Assignment Order, 3 FCC Rcd. at 6993. In short, GIC has used NEXSAT's Request as a vehicle to advance its own private and unrelated goals, which is wholly inconsistent with any notion of standing under Section 309 of the Act. See, e.g., Office of Communication of United Church of Christ v. FCC, 359 F.2d 994, 1000-06 (D.C. Cir. 1966).

II. THERE IS NO MERIT TO THE SUBSTANCE OF GIC'S ASSERTIONS.

A. GIC's Views On The Future Of The Commission's
Orbital Spacing Policies Are Irrelevant.

The main point of the Opposition is that GIC apparently would prefer that C-band satellites be spaced at 3° rather than 2°. See Opposition at 11-14. GIC seems to think that, if NEXSAT's Request were not granted, the FCC would delete NEXSAT's assigned orbital positions and the 2° spacing policy would be abandoned by the FCC. GIC has no basis whatsoever for making such an assumption. GIC should not be permitted to use NEXSAT's Request to argue the merits of an unrelated petition for rulemaking that has not even been filed.¹ If and when such a proposal is filed with the Commission, GIC presumably will have ample opportunity to express its views through proper procedural channels.

B. GIC's Substantive Allegations Are Untrue.

GIC's arguments against the merits of NEXSAT's Request also are based on an unfounded assumption. GIC charges that NEXSAT seeks to delay construction "in order to await the outcome of . . . technological developments," Opposition at 8, claiming that this is an inadequate basis for an extension. See id. at 4-5.

¹ In furtherance of its position, GIC claims, without support, that demand for voice and data satellite capacity is declining, while demand for C-band video capacity is on the rise. See Opposition at 12. This view ignores the fact that the recently-announced mid-power "quasi-DBS" services, such as Skypix and K-Prime, plan to employ Ku-band satellites.

As the Commission is aware, NEXSAT (and its predecessor, National Exchange, Inc. ("NEX")) continuously has pushed to advance the state of the art in satellite design and services, rather than wait for the technological developments of others. See, e.g., National Exchange Satellite, Inc., 1 FCC Rcd. 682, 689 n.35 (1986). The basis for NEXSAT's Request is that the SpotNet design is sufficiently complex that the technical discussions that necessarily precede the finalization of any satellite construction contract have consumed more time than would have been the case were NEXSAT proposing a spacecraft of traditional design.

NEXSAT has had discussions with several satellite manufacturers and, as yet, has not been able to select a manufacturer, in part because of the non-traditional design of the SpotNet spacecraft. The delay in the contracting process can be attributed to NEXSAT only in the sense that it is making every effort to construct the satellites that were proposed in its application, a matter traditionally of some significance to the Commission. See, e.g., American Telephone and Telegraph Company, 2 FCC Rcd. 4431, 4433-35 (1987).²

² In this regard, GIC distorts the facts when it claims in its Opposition, at 9-10, that the basis for NEXSAT's Request is nothing but a restatement of NEXSAT's explanation for not having started construction prior to the release of the order awarding it the 93° and 127° W.L. orbital locations. See Assignment of Orbital Locations, 5 FCC Rcd. 179 (1990) ("Reassignment Order"). The earlier delay stemmed from the fact that the Original Assignment Order had awarded NEXSAT slots in the high power density video arc, an environment entirely incompatible with SpotNet. See, e.g., Letter from James R. Keegan, Chief, Domestic Facilities Division, to Henry Goldberg, Esq., dated June 7, 1990, at 2.

Finally, it should be noted that, in its attempt to convince the Commission to alter its orbital spacing policy, GIC entirely ignores the anticompetitive effect of its proposal. The main goal of the Commission's "open skies" policy, including the move to 2° orbital spacing, has been to increase the level of competition in satellite communications, see, e.g., 2° Spacing, 54 R.R.2d 577; Assignment of Orbital Locations to Space Stations in the Domestic Fixed Satellite Service, 84 F.C.C.2d 584, 588 (1981). In contrast, GIC's main goal is the sale of additional C-Band TVRO descramblers. GIC has not demonstrated why its goal should be given more weight than the FCC's.

CONCLUSION

As the result of the foregoing, NEXSAT requests that its extension request be granted.

Respectfully submitted,

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December 20, 1990

CERTIFICATE OF SERVICE

I hereby certify that I have, this 20th day of December, 1990, caused a copy of the foregoing Reply to Opposition to Request for Extension of Time to be hand-delivered, to the following:

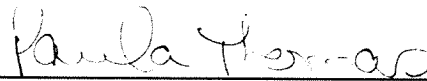
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