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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of
Establishment of
Policies and Procedures to
Govern the Lease of Inmarsat
Satellite Capacity For Domestic
Mobile Satellite Service

) INTERNATIONAL FACILITIES DIVISION
) COMMON CARRIER BUREAU
)
) NOV 14 1989
)

To: The Commission

**PETITION TO ESTABLISH
POLICIES AND PROCEDURES TO
GOVERN INTERIM DOMESTIC MOBILE
SATELLITE SERVICE**

Respectfully submitted,
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SUMMARY

By this petition, Geostar Messaging Corporation ("GMC") is requesting the Commission to establish policies and procedures to govern the lease of satellite capacity for the provision of interim domestic mobile satellite ("MSS") over Inmarsat space segment. Because there is only a limited amount of Inmarsat capacity available for this purpose, it is essential that the Commission take steps to insure that all providers of interim domestic MSS service have direct access to Inmarsat capacity through Comsat on a nondiscriminatory and equitable basis, and establish basic technical criteria to insure that this limited capacity is used efficiently and in a manner that will maximize service to the public. In addition, because of the potential for cross-subsidization between Comsat's various Inmarsat space segment offerings, the Commission must determine what accounting safeguards should be applied to Comsat's provision of interim domestic MSS space segment.

Several vehicles are already available to the Commission for establishing and implementing such policies and procedures without instituting a new rulemaking proceeding (i.e., GMC's blanket license application and DLMSS petition, Comsat's Marisat lease extension and Marisat AOR Relocation applications, and its

yet-to-be filed Section 214 application and tariff to offer service). However, unless the Commission provides clear guidance on how it would utilize those vehicles to address the various issues surrounding the interim use of Inmarsat for domestic MSS, the ad hoc filings in these different forums and Commission decisions on those individual filings may result in haphazard regulatory developments, to the detriment of GMC and other potential MSS service providers.

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Geostar Messaging Corporation ("GMC"), by its attorneys, hereby requests the Federal Communications Commission (the "Commission") to establish policies and procedures to govern the lease of satellite capacity for the provision of interim domestic mobile satellite service ("MSS") over Inmarsat space segment.^{1/} In support thereof, GMC offers the following.

^{1/} As used herein, the term "domestic MSS" refers to domestic mobile satellite services, including land, aeronautical and maritime. This term is distinguished from "aeronautical mobile satellite service" (AMSS), which refers to international aeronautical services provided via the Inmarsat system. See Report and Order in CC Dkt. No. 87-75, In re Provision of Aeronautical Services via the Inmarsat System, 4 FCC Rcd 6072 (1989)(hereafter AMSS Order).

I. Overview

Although the Commission has recently authorized the construction of a satellite system to provide domestic MSS, it has not considered how the principles established in that proceeding should be applied to the special circumstances which currently exist with regard to the provision of interim domestic MSS service over Inmarsat space segment. These include the critical need for all those who wish to provide competitive domestic MSS services to have access to interim capacity, the fact that the only available source of such interim capacity is the Inmarsat system and that such capacity is in limited supply, and, in the absence of clearly defined Commission policy in this area, the potential exclusion of service providers, such as GMC, from access to that Inmarsat capacity. GMC is a company that is actively seeking to provide domestic MSS service as both a space segment licensee and an end-service provider.^{2/}

GMC therefore requests the FCC to establish policies and procedures in this area.^{3/} Specifically, the Commission is requested to establish policies and procedures:

^{2/} See infra n.5 & 6.

^{3/} GMC is filing simultaneously herewith a related petition requesting the Commission to advise Comsat and other involved parties that any lease negotiated with Inmarsat will be subject to the outcome of this proceeding.

- (a) to insure that all providers of interim domestic MSS service have direct access to Inmarsat capacity through Comsat on a fair and equitable basis;
- (b) to insure that the public interest in spectrum efficiency and maximizing service is effectuated by establishing basic technical criteria for all lease requests for interim domestic MSS service using the Inmarsat space segment; and
- (c) to establish accounting safeguards to be applied to Comsat's provision of interim domestic MSS space segment via Inmarsat.

II. Background

A. GMC Is A Company Committed to Providing MSS Over The Long-Term, With A Need To Acquire Interim Domestic MSS Space Segment Now.

GMC is actively seeking to provide domestic MSS service on a long-term basis by constructing and launching a satellite to provide domestic Digital Land Mobile Satellite Service ("DLMSS") using frequencies in the maritime satellite service band. GMC's proposed service would be competitive, in part, with the service

that the Commission has authorized the American Mobile Satellite Corporation (AMSC) to provide using frequencies in another band.^{4/} In furtherance of this objective, GMC has petitioned the Commission to permit DLMSS service in the maritime band^{5/}, and has also applied for permits to construct and launch a satellite system to provide DLMSS.^{6/} Moreover, in order to begin securing customers at as early a date as possible, GMC has applied for a blanket license to operate 10,000 mobile earth

4/ See Memorandum Opinion, Order, and Authorization in Gen. Docket No. 84-1234, In re 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, 4 FCC Rcd 6041 (1989) (hereafter "AMSC Authorization Order").

5/ GMC filed its petition for rulemaking on June 16, 1988. See In the Matter of Amendment of Parts 2 and 25 of the Rules and Regulations to Establish a Digital Land Mobile Satellite Service, RM-6459 (hereafter "DLMSS Rulemaking"). Although comments and reply comments were filed in 1988 in response to GMC's petition, the Commission has not yet acted on GMC's petition.

6/ See Geostar Messaging Corporation, Application for a Digital Land Mobile Satellite System, File No. _____ (filed June 16, 1988) (hereafter "DLMSS Application"). This system would include high-capacity, spot-beam satellites, as well as single-beam CONUS-coverage satellites for early market entry (the "DLMSS-Prime system" (see GMC's DLMSS Application at Section 19, "Application for DLMSS-Prime Space Station")). GMC is ready and willing to proceed immediately with construction of its proposed interim DLMSS space segment pending Commission proceedings to license a high-capacity system in these bands.

stations using interim space segment facilities.^{7/} As both an end-service provider and a potential long-term operator of dedicated DLMSS space segment, GMC needs access to interim domestic MSS capacity on Inmarsat space segment in order to compete for a share of the domestic MSS market.

B. There Is Only A Limited Amount Of Space Segment Capacity Available That Can Be Used To Provide Interim Domestic MSS Service.

It appears that the only domestic MSS space segment authorized to date by the Commission will not be available until 1994. Unless the Commission acts promptly to authorize the construction and launch of additional MSS facilities which could be placed into operation before that date, the only space segment capacity available for use by providers of domestic MSS during the next four to five years will be space segment provided by Inmarsat. Such capacity as Inmarsat can provide will be limited.^{8/} The only source of interim capacity which appears reasonably likely to be available for the provision of

^{7/} In re Application of Geostar Messaging Corporation For a Blanket Radio Station License to Operate Mobile Earth Stations in the 1530-1544 MHz and 1626.5-1644.5 MHz Bands, File No. _____ (filed May 30, 1989) (hereafter "GMC Blanket License Application") (hereafter "Blanket License Application").

^{8/} The availability of Inmarsat space segment capacity for domestic MSS will also be restricted by the need to satisfy demand for international AMSS capacity.

interim domestic MSS is the Marisat F-1 satellite.^{9/} The Marisat F-1 satellite is currently located at 15° W.L. If the Commission approves several proposals now pending before it,^{10/} the Marisat satellite may be relocated to 106° W.L. at the end of 1989 or early 1990. From this position it can be used to provide interim domestic MSS service within the United States.

Under Inmarsat's policies and procedures governing the lease of Inmarsat capacity for domestic services, "an application shall be given preference over another application which

^{9/} The MARECS satellite currently located at 26° W.L. is another possible source of interim domestic MSS space segment capacity. Inmarsat may be willing to relocate this satellite to 55° W.L. From this position it could be used to provide low-elevation angle MSS service to the U.S. The Inmarsat Council is likely to consider such a move only if and when the Inmarsat II satellite, which is scheduled for launch in the October 1990-January 1991 time frame, is successfully launched. Thus, at this time there is no guarantee any MARECS capacity will become available for interim MSS use.

^{10/} See In re Application of Comsat General Corporation for authority to relocate the MARISAT F-1 Atlantic Ocean Region Satellite (KS-33), File No. 1299-DSS-ML-89 (filed April 17, 1989) ("Marisat Relocation Application"); In re Application of Comsat General Corporation for authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease commercial space segment capacity to INMARSAT via MARISAT satellites in the Atlantic, Pacific, and Indian Ocean Regions, File Nos. 1301/1302/1303-DSS-MISC-89 (filed April 17, 1989). The only apparent question which needs to be resolved with respect to the move of the Marisat F-1 satellite is whether government satellite capacity serving the Atlantic Ocean is available for the Navy to use instead of Marisat capacity.

was made at a later date."^{11/} Therefore, it appears that Comsat intends to make capacity on the Marisat satellite available on a first-come, first-served basis. Because the amount of capacity available on Marisat is limited, Comsat has not been able to guarantee GMC that it will be able to make capacity available to GMC on this satellite. In fact, Comsat has advised GMC that if certain actions now underway are successfully concluded -- by which GMC assumes Comsat is referring to a prior lease request -- GMC will not be able to obtain Marisat space segment from Comsat.

C. The Commission Should Establish Policies and Procedures to Determine Whether and How the Limited Amount of Space Segment Available Should Be Allocated Among Users.

One way the Commission can respond to the demand for space segment for the provision of interim domestic MSS is to issue an NPRM on GMC's DLMSS Rulemaking petition and to accept GMC's concurrently filed DLMSS application. The earlier such a DLMSS authorization can be issued, particularly an authorization for the proposed "interim DLMSS-Prime" space segment,^{12/} the sooner demand for Inmarsat space segment can be alleviated by providing

^{11/} Inmarsat's Policies and Procedures Relating to Requests for Leased Space Segment Capacity for Domestic Services, December 1, 1988, at Attachment 2.

^{12/} See supra n.6.

additional domestic MSS space segment capacity. As part of an interim solution, the Commission can also encourage Inmarsat to allocate temporarily more of its currently planned capacity for domestic MSS.

In the meantime, however, the Commission should determine how the limited amount of Inmarsat space segment that is available for domestic MSS should be allocated among those who desire to use this capacity.

Several vehicles are already available to the Commission for establishing and implementing such policies and procedures without instituting a new rulemaking proceeding. However, absent a clear statement from the Commission on how it would utilize those vehicles to address all of the issues surrounding the interim use of Inmarsat for domestic MSS, the ad hoc filings in these different forums and Commission decisions on those individual filings may result in haphazard regulatory development, to the detriment of GMC and other potential MSS service providers. To avoid such a development, GMC is filing this petition to request the Commission to address these issues in a comprehensive fashion.

III. The Commission Should Insure That All End-Service MSS Providers Have Nondiscriminatory and Equitable Access to Comsat For MSS Space Segment Capacity.

Absent Commission intervention, either to allocate capacity or to create additional capacity, the first request to lease Inmarsat capacity will apparently consume all the available interim capacity.^{13/} However, to permit only one company to have exclusive access to all interim domestic MSS capacity made available by Comsat is contrary to statutory requirements, past practice by the Commission under similar circumstances, and the public interest. For these reasons, all domestic MSS space segment and end-service providers should be given direct access to Comsat for interim Inmarsat space segment capacity.

A. Nondiscriminatory and Equitable Access Is Mandated by Statute

The Communications Satellite Act requires the Commission to

^{13/} This assumes that only the Marisat AOR satellite will be available for domestic MSS. If another Inmarsat satellite, such as the MARECS AOR satellite, becomes available, the degree of capacity shortage may be reduced. As explained previously, however, there is no guarantee this will occur. See supra n.9.

"insure that all present and future authorized carriers shall have nondiscriminatory use of, and equitable access to, the communications satellite system."^{14/}

Since this statute governs both of the satellite systems in which Comsat has the privileged status of U.S. Signatory, it is apparent that this statute requires that the Commission insure that all space segment and end-service providers of MSS have direct access to Comsat for interim MSS space segment.^{15/}

The statutory obligation to provide nondiscriminatory and equitable access is reflected in the Commission's AMSS Order, wherein the Commission concluded that all AMSS service providers should directly access Comsat for aeronautical MSS capacity.^{16/}

^{14/} 47 U.S.C.A. §721(c)(2)(1984).

^{15/} The Commission's authority to insure nondiscriminatory and equitable access to Comsat is also derived from Titles I, II and III of the Communications Act. See 47 U.S.C. §§151, 201 et seq, 301, 741, and 753 c)(3); see also Communications Satellite Corporation, Memorandum Opinion, Order and Authorization, ___ FCC Rcd ___, DA 89-1259 (rel. Oct. 5, 1989), Communications Satellite Corporation, Memorandum Opinion and Order, ___ FCC Rcd ___, DA 89-1280 (rel. Oct. 10, 1989)(orders granting Comsat Section 214 authority to provide aeronautical service via the Inmarsat system and requiring that such service be provided pursuant to tariff). As discussed infra, Comsat is subject to Title II of the Act even if it files a carrier-to-carrier contract to provide domestic MSS capacity to another entity.

^{16/} AMSS Order, supra n.1, 4 FCC Rcd 6072, 6082-83 (1989).

B. There is Precedent for Allocating Spectrum in Situations Involving Limited Capacity

Historically, the Commission has made public interest determinations as to how limited capacity should be allocated among carriers when there is not enough capacity available to satisfy all requests for that capacity.

Thus, for example, in ITT World Communications Inc. et al.,^{17/} three international record carriers ("IRCs") sought to provide leased channel service to the Department of Defense between Hawaii and three Far East points. Each IRC requested authority to lease thirty circuits from Comsat which were available on the Intelsat II satellite. Rather than grant the application of only one IRC, the Commission ordered Comsat to split the thirty circuits evenly among the three IRCS.

In AT&T Co.,^{18/} the Commission concluded that, in view of the limited number of channels available to U.S. carriers on the Early Bird satellite, it would dispose of the applications filed by AT&T, RCA, ITT and Western Union for capacity on the satellite by allocating the available channel capacity between the voice and record carriers on the basis of actual or reasonably

^{17/} 6 F.C.C.2d 511 (1967) ("Thirty Circuits Case").

^{18/} 38 F.C.C.2d 1315 (1965).

expected requirements with reasonable allowance for normal growth or to meet unexpected demands.

The Commission recognized the public benefits of facilities-based competition in Domestic Public Cellular Radio Communications Service.^{19/} There, the Commission stated that:

[i]t is our view that even the introduction of a marginal amount of facilities-based competition into the cellular market will foster important public benefits of diversity of technology, service and price, which should not be sacrificed absent some compelling reason. The Commission is unpersuaded that these benefits would be outweighed by the benefits associated with the increased efficiency of a 40 MHz system over that of two 20 MHz systems. . . .

In Domestic Fixed-Satellite Transponder Sales,^{20/} the Commission was faced with a public policy issue similar to that presented here. The issue presented in the transponder sales case was whether allowing the sale of satellite capacity to individual customers for bulk private use would deplete the supply of available satellite capacity to the detriment of smaller customers who obtain such capacity on a common carrier basis. In other words, the Commission had to determine whether

^{19/} Report and Order in CC Docket No. 79-818, 86 F.C.C.2d 469, 478 (1981).

^{20/} Memorandum Opinion, Order and Authorization in CC Docket No. 82-45, 90 F.C.C.2d 1238 (1982), aff'd Wold Communications, Inc. v. FCC, 735 F.2d 1465 (D.C.Cir. 1984).

the supply of capacity was so limited that it would not be in the public interest to permit transponder sales. Thus, this case also demonstrates that, where capacity is limited, the Commission will make public interest determinations as to whether and how that capacity should be allocated.^{21/}

C. Leasing All Available Capacity to the First Domestic MSS Provider to Request It Would Interpose an Unnecessary Middleman Between Comsat and Other MSS Providers

If Comsat is allowed to lease all available capacity to the first domestic MSS provider to request it, then there will be an unnecessary "middleman" between Comsat and other domestic MSS providers. In other words, other domestic MSS providers needing Inmarsat capacity would be forced to obtain such capacity from Comsat's sole carrier-customer on a resale basis.

Interposing another middleman, in addition to Comsat, between the reseller and space segment provider is unreasonable and contrary to the public interest for several reasons. First, it will result in artificially inflated prices by adding another

^{21/} Although the Commission decided to permit transponder sales, it indicated that the potential problems associated with limited satellite capacity is an on-going concern and, therefore, it would not authorize additional non-common carrier satellites if, for example, it developed that additional transponders are required for users who need common carrier service. Domestic Fixed-Satellite Transponder Sales, supra n.20, 90 F.C.C.2d at 1255.

tier of monopoly rents to the monopoly rents already being paid by Comsat's carrier-customer. Thus, there will be two tiers of monopoly rents built into the price paid by resellers, and ultimately passed on to end users. While the first tier is unavoidable because Comsat is the only entity authorized to directly access Inmarsat, the second tier is unnecessary and contrary to the public interest because end users will benefit if the use of middlemen is minimized.^{22/} The way to do this is to permit multiple entities to access the space segment capacity directly from Comsat.

Second, having a second middleman is contrary to the letter and spirit of Commission policy with respect to the provision of mobile satellite services. In the MSS Licensing Decision,^{23/}

^{22/} The Commission has previously recognized that eliminating unnecessary middlemen serves the public interest. See Earth Station Ownership, CC Docket No. 82-540, 100 F.C.C.2d 250, 275 (1984) (the Commission decided to allow carriers to own and operate their own Intelsat earth stations instead of having to lease Intelsat earth station facilities from the Earth Station Ownership Committee, in part, because "[t]he provision of earth station services by carriers with customer bases eliminates a middleman and may be the most efficient way to provide service."); Authorized User III, CC Docket No. 80-170, 100 F.C.C.2d 177 (1985), aff'd Western Union International, Inc. v. FCC, 804 F.2d 1280 (D.C.Cir. 1986) (allowing non-common carrier users to obtain space segment directly from Comsat World Systems Division rather than having to go through a common carrier).

^{23/} Second Report and Order in Gen. Dkt. No. 84-1234, 2 FCC Rcd 485, 490 (1987).

the Commission concluded that, although AMSC will have a monopoly in the provision of MSS space segment in the frequency band which it was authorized to use, competition in the provision of service to end users will be provided by resellers of MSS space segment. Thus, no middleman will be involved in AMSC's provision of space segment. Although the MSS Licensing Decision does not specifically consider the provision of interim domestic MSS space segment capacity, inasmuch as Comsat will be the monopoly provider of this capacity, there is no logical justification for adding a second middleman in the provision of interim domestic MSS space segment when none will be involved in the provision of permanent MSS space segment. Moreover, in determining how aeronautical mobile satellite services via Inmarsat should be provided domestically, the Commission held that all resellers should directly access Comsat for this capacity.^{24/}

For these reasons, the Commission should require that all applicants for the provision of interim domestic MSS be given equal access to Inmarsat capacity.

^{24/} See AMSS Order, supra, n.1, 4 FCC Rcd at 6082-83.

IV. Basic Technical Guidelines Are Needed to Insure Efficient Use of the Limited Capacity Available for Interim Domestic MSS.

Currently, there is little if any published information that can be used to evaluate the efficiency with which the Marisat AOR capacity will be used under the pending lease requests or to propose alternative transponder configurations that might allow more service to be provided over the limited capacity available. Such information should be made publicly available for comment so that the Commission can have the benefit of the comments of all interested parties in evaluating the efficiency of lease requesters' plans to use scarce interim domestic MSS space segment capacity.

The need to insure efficient use of spectrum exists regardless of the number of entities with access to that capacity, but it is particularly necessary where one entity may claim all the capacity available for interim domestic MSS. If one entity is allowed to monopolize the available interim domestic MSS capacity, it can configure that capacity so as to exclude competitors. There is little incentive for an entity with exclusive access to Inmarsat capacity to utilize the most efficient spectrum use techniques available, if by using such technology, it might create enough additional capacity to

support another competitor using the system. In such cases, the Commission clearly needs to adopt technical guidelines so that it can insure that the limited space segment capacity is being used efficiently to maximize service to the public.

To rectify this situation, the Commission should require that certain basic technical information contained in all lease requests made to Comsat be made public. This should include the satellite or satellites to be used, the coverage, antenna gains, and number of channels proposed, and such other basic information as is necessary to permit an assessment of the efficiency of the proposed system and the feasibility of allowing other end users access to the space segment. Most of this technical information would normally be contained in a blanket application for mobile earth-station licenses, such as the one GMC has already submitted.

The Commission should also review current Inmarsat documentation concerning those issues with the purpose of publicly releasing all relevant information relating to the capacity Inmarsat will make available and the nature of the leases it has authorized. The Commission should offer the public the opportunity to comment on this information and it should issue guidelines on the technical characteristics of Inmarsat's

interim domestic MSS leases and associated mobile earth stations based on the comments received.

The public interest in spectrum efficiency and maximizing service should outweigh all but the strongest claims that such information is proprietary. Where such claims are clearly legitimate, however, the review of the proprietary information should be conducted by the Commission under its normal standards for confidential treatment of filings.^{25/}

V. The Commission Must Determine What Accounting Safeguards Should Be Applied to Comsat's Provision of Interim Domestic MSS Space Segment via Inmarsat

If Comsat is authorized to provide interim domestic MSS space segment via Inmarsat, it will then be providing three types of space segment through Inmarsat -- maritime, aeronautical, and MSS. While Comsat has a statutorily created monopoly only in the provision of maritime space segment,^{26/} it will also have a monopoly, albeit temporary, in the provision of aeronautical and MSS space segment services. Consequently, Comsat has the potential ability to charge excessive rates for MSS

^{25/} See 47 C.F.R. §0.457

^{26/} See Communications Satellite Corporation, 2 FCC Rcd 390 (1987).

space segment by shifting costs and revenues among its various Inmarsat space segment offerings. For example, Comsat could attempt to disguise excessive returns on MSS space segment by shifting some of these revenues to the maritime category or it could attempt to shift some of the large start-up costs in implementing aeronautical space segment to the MSS space segment category.

The Commission previously addressed the cross-subsidization issue in authorizing Comsat to provide aeronautical services via Inmarsat. In the AMSS Order, the Commission determined that, while Comsat need not provide Inmarsat aeronautical services through a separate subsidiary, separate accounting for maritime and aeronautical services is necessary.^{27/} Similarly, the Commission concluded that accounting safeguards are sufficient to prevent cross-subsidization between aeronautical space segment services and aeronautical earth segment services. In addition, the Commission required Comsat to file unbundled rates for space segment and earth station services.^{28/}

^{27/} AMSS Order, supra n.1, 4 FCC Rcd at 6084.

^{28/} See Memorandum Opinion, Order and Authorization, ___ FCC Rcd ___, DA 89- 1259 (rel. Oct. 5, 1989), at paras. 23, 29.

The Commission must make these same types of determinations in the context of MSS services provided via Inmarsat not only to prevent cross-subsidization between maritime and MSS services, but to prevent possible cross-subsidization between aeronautical and MSS services as well.

VI. The Commission Has Several Vehicles Available to It For Considering These Issues

There are several avenues available to the Commission for addressing the issues raised herein without instituting a new rulemaking proceeding.

A. GMC's Blanket License Application

The Commission has before it an application which GMC filed on May 30, 1989, in part as an end-service provider pursuant to the resale provisions of the MSS Licensing Decision. GMC applied for this blanket radio station license to operate 10,000 mobile earth stations initially using interim space segment facilities such as the interim Inmarsat capacity proposed in the pending Comsat applications.^{29/} GMC's application, together with those of other end-service providers, offers an opportunity to address the issue of equitable access to interim Inmarsat

^{29/} GMC Blanket License Application, supra n.7.

space segment. The Commission should accept GMC's blanket license application for filing and place it on public notice, thereby presenting interested parties an opportunity to raise the access issue.

B. Cosat's Marisat Lease Extension
and Marisat AOR Relocation Applications

GMC has earlier raised its concerns over the policies and procedures the Commission intends to apply to the interim use of Inmarsat capacity for domestic MSS. Earlier this year, the Commission accepted and placed on public notice Cosat World Systems Division's ("Cosat-WSD") application to participate in the Inmarsat program to extend the lease of Marisat space segment from Cosat General Corporation^{30/} and a Cosat General application to relocate the Marisat AOR satellite for interim domestic MSS.^{31/} In GMC's comments concerning these applications, GMC raised the issue of whether the end-service provider of interim domestic MSS service should be given direct access to

30/ In re Communications Satellite Corporation's Application for authority to participate in an Inmarsat program to extend the lease of the L-band capacity of the Inmarsat system through 1992, File No. CSS-89-002-P/L (filed April 10, 1989) ("Lease Extension Application"). Notice that Cosat-WSD's application had been accepted for filing appeared in Public Notice Report No. I-6223 (April 19, 1989).

31/ Marisat Relocation Application, supra n.10.

Comsat/Inmarsat space segment.^{32/} However, the lack of detailed information in these applications makes it difficult to use them to address the types of issues raised above.

C. Comsat's Section 214 Service Application

A third alternative vehicle for establishing policies to govern the allocation of interim MSS space segment would be Comsat-WSD's application for authority under Section 214 to acquire space segment capacity from Inmarsat and to provide such capacity to mobile satellite service providers via the Inmarsat system. Although Comsat-WSD has not yet filed such an application,^{33/} GMC believes it is required to do so.^{34/}

^{32/} See, e.g., Comments of Geostar Messaging Corporation, filed May 19, 1989, in connection with Comsat-WSD's Lease Extension Application, File No. CSS-89-002.

^{33/} In its pending Marisat application, Comsat states that it will "subsequently file other applications as appropriate in order for COMSAT WSD to provide interim leased channel service to recognized MSS carriers." However, in discussing a GMC lease request for interim Inmarsat capacity, the possibility was raised that Comsat would provide leased capacity under a carrier-to-carrier contract, rather than pursuant to a Section 214 application and tariff. GMC therefore believes that the Commission should address the appropriateness of a carrier-to-carrier contract under those conditions.

^{34/} Comsat is a "dominant" carrier under the Commission's Competitive Carrier decisions. Fifth Report and Order in CC Docket No. 79-252, 98 F.C.C.2d 1191 1201 n.33 (1984). As such, it is subject to Section 214 of the Communications Act of 1934, as amended, which states, inter alia, that "[n]o carrier shall ...operate any line... or shall engage

Moreover, Comsat-WSD is required to file its Section 214 application "at the earliest practicable date after the proposed facilities or operational programs have become defined to the point where specific designs, operational configurations, services and service dates are under review and there is a reasonable probability that a proposal will be presented" and, in any event, "no later than 60 days prior to anticipated action on the proposed item"35/ by the Inmarsat Council.36/ Presumab-

in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the ...operation... of such additional or extended line. 47 U.S.C.A. §214(a)(1984).

Comsat filed a §214 application in a similar proceeding in which Comsat sought authority to provide aeronautical satellite service via the Inmarsat satellite system. In re Applications of Communications Satellite Corporation, ___ FCC Rcd ___, DA 89-1259 (released October 5, 1989).

35/ Statement of Policy Concerning Procedures Applicable to Comsat's Applying for Commission Authorization to Participate in Certain Intelsat Activities, 46 F.C.C.2d 338, 339 (1974) ("1974 Policy Statement").

36/ Although the 1974 Policy Statement is applicable on its face to Comsat only in connection with its Intelsat activities, the underlying reason for establishing the procedure in 1974 applies equally to governmental oversight of Comsat in connection with its Inmarsat activities after Inmarsat legislation was adopted in 1978. As the Commission has noted, in explaining the Commission's authority to issue instructions to Comsat with regard to Inmarsat matters, the primary Senate Subcommittee considering the Inmarsat legislation stated:

ly, therefore, Comsat will file a Section 214 application as soon as it receives a final request for space segment to provide MSS service, and at least sixty days before the Inmarsat Council acts on any proposal. This Section 214 application could then be utilized as a vehicle for the consideration of the issues raised herein.

(1) The Filing of a Carrier-to-Carrier Contract Would Not Obviate the Need for Comsat To File a Section 214 Authorization

Comsat may intend to file a carrier-to-carrier contract pursuant to Section 211 of the Act.^{37/} However, a carrier-to-carrier contract would not obviate the need to file a Section

"The Committee expects that Comsat will not vote in the Inmarsat Council until a determination has been made by the Commission regarding the matter at issue. This expectation, of course, is dependent upon the fact that Comsat will file with the Commission on a timely basis and the presumption that the Commission will act in an expeditious manner so as not to delay Comsat's exercise of its responsibilities as a member of Inmarsat."

Final Report and Order in C.C. Docket No. 79-266, In re Comsat Study - Implementation of Section 505 of the International Maritime Satellite Telecommunications Act, 77 F.C.C.2d 564, 729 n.20 (1980), citing S. Rep. No. 95-1036, 95th Cong. 2d Sess. at 14-15 (1978).

^{37/} 47 U.S.C.A. §211 (1984).

214 facilities application. As the Commission has previously stated:

Under Section 214 of the Communications Act, the Commission has the obligation of considering whether authorizations for new facilities would serve the public interest. . . . As a U.S. carrier subject to both the Communications Act and the Satellite Act of 1962, Comsat is bound to make formal application to participate in new facilities to be established by INTELSAT and INMAR-SAT.^{38/}

A contract, on the other hand, enables the Commission to determine whether the manner in which the carrier proposes to provide a particular service is consistent with the carrier's Title II obligations. Thus, a necessary predicate to the filing of a contract is a Commission determination via a Section 214 application that the public interest would be served by authorization of the underlying facilities.

In this respect, if a carrier-to-carrier contract is a substitute for anything, it is a tariff, not a Section 214 application. The relationship between a Section 214 application, on the one hand, and a tariff or a contract on the other, is made clear in the following passage from a 1974 Commission decision:

^{38/} Comsat Study, 77 F.C.C.2d 564, 738 (1980)(emphasis added).

[T]here is no basis for distinguishing between services provided pursuant to a contract and services pursuant to a tariff insofar as the coverage of Section 214 is concerned. Manifestly, the regulatory scheme of the Act and the public interest requires that we review any actions taken in alleged violation of a contract or a tariff to insure compliance with Section 214.^{39/}

D. Comsat's Tariff to Offer Service

A fourth vehicle for considering the issues raised by the provision of interim domestic MSS space segment via Inmarsat is a tariff proceeding. Comsat should be required to file a tariff to offer interim domestic space segment, rather than a carrier-to-carrier contract because, as the sole provider of such space segment, it will have the ability to exact monopoly rents for this service and to effectively foreclose individual MSS providers from entering the interim service market. It is, therefore, essential that the public have the opportunity to comment on, and the Commission have the opportunity to pass upon, the reasonableness of Comsat's rates and terms of access for this service.

^{39/} Bell System Tariff Offerings, 46 F.C.C.2d 413, 432 (1974), aff'd sub nom. Bell Telephone Company of Pennsylvania v. FCC, 503 F.2d 1250 (34d 1974), cert. denied, 422 U.S. 1026 (1975).

In analogous situations involving the control of essential facilities, the Commission has required carriers to file tariff schedules rather than contracts for access to such facilities.^{40/} Significantly, the Commission has stated that "a carrier which has control over an essential component of interstate communications has a special obligation to provide access to that facility."^{41/} A tariff is the most effective means for ensuring that the carrier fulfills this obligation.

The Commission echoed this conclusion in 1982, when it stated:

The tariff filing and review process affords the Commission an opportunity to examine a given allocation scheme before it is implemented. This prior review function would appear warranted in face of excess demand for particular facilities or other

^{40/} See AT&T, 42 F.C.C.2d 654, 659 (1973) ("we conclude that the filing of tariff schedules rather than negotiation of private contracts is the most appropriate means by which to achieve our objective that these facilities shall be provided to other satellite carriers on 'reasonable and non-discriminatory conditions.' One of the primary purposes of tariffs is to assure that carriers will provide facilities and services without discrimination."); GTE Satellite Corp., 57 F.C.C.2d 153, 170 (1975); American Satellite Corp., 73 F.C.C.2d 317, 322 (1979).

^{41/} American Satellite Corp., 73 F.C.C. 2d 317, 323 (1979); Bell System Tariff Offerings, 46 F.C.C.2d 413 (1974) aff'd sub nom. Bell Telephone Company of Pennsylvania v. FCC, 503 F.2d 1250 (3d Cir. 1974), cert. denied, 422 U.S. 1026 (1975).

circumstances likely to generate controversy. In those instances, prior review is a more efficient and orderly administrative procedure to monitor allocation practices. Otherwise the Commission risks embroilment in multiple complaint investigations and potential customer reassignment decisions.42/

Moreover, not requiring a tariff in this case would be inconsistent with the Commission's decision to require a tariff with respect to Comsat's provision of aeronautical MSS space segment via Inmarsat.43/

To summarize, the Commission has numerous alternative vehicles available which it could use to consider the issue of access to Comsat for interim domestic MSS space segment. In view of the fact that, in a parallel situation involving provision of aeronautical MSS services via Inmarsat, the Commission addressed competitive access issues,44/ it would be arbitrary and capricious for the Commission not to address the issue of providing interim domestic MSS space segment via Inmarsat.

42/ Satellite Common Carriers, Transponder Assignment Procedures, 88 F.C.C.2d 1477, 1480 (1982).

43/ See Memorandum Opinion, Order and Authorization, ___ FCC Rcd ___, DA 89- 1259 (rel. Oct. 5, 1989), at paras. 23, 29.

44/ AMSS Order, supra n.1.

VII. Conclusion

For the foregoing reasons, the Commission should consider the issue of how limited interim domestic MSS space segment should be allocated among providers of such service, in the context of one of the several vehicles available to it for this purpose. It should conclude that the policy which best serves the public interest is to allow all providers of interim domestic MSS service access to Inmarsat space segment directly through Comsat. It should establish basic technical guidelines to insure the efficient use of the limited capacity available for interim domestic MSS and it should establish accounting safeguards in connection with Comsat's provision of interim domestic MSS space segment.

Respectfully submitted,

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November 7, 1989

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I, Marissa Yatco, a secretary in the law firm of Fletcher, Heald & Hildreth, certify that on November 7, 1989, a copy of the foregoing "Petition to Establish Policies and Procedures to Govern Interim Domestic Mobile Satellite Service Policies" was mailed first-class, U.S. postage prepaid to:

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