

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

In the Matter of)		
)		
Communications Satellite Corporation)		
)		
Petition for Declaratory Ruling)	File No:	I-S-P-92-001
or, in the Alternative, For Partial)		
Waiver of Structural Separation)		
Requirements)		
)		
Request for Waiver of Structural)	File No:	I-S-P-91-004
Separation Allowing Comsat's)		
World System's Division to Provide)		
Sales, Engineering, Billing, and)		
Administrative Support to Corporate)		
Affiliate for the Resale of Cellular)		
Communications Service to Ships)		

Memorandum Opinion and Order

Adopted: August 21, 1996

Released: August 23, 1996

By the Acting Chief, International Bureau:

Introduction

1. By this Order, we conditionally approve the nonstructural safeguards outlined in Comsat's Non-Accounting Compliance Plan ("Comsat Plan") filed by the Communications Satellite Corporation ("Comsat"). The Commission, in permitting Comsat to provide certain maritime value-added services on an unseparated basis through Comsat Mobile Communications ("CMC"), required Comsat to identify nonstructural safeguards to protect competing enhanced service providers and customers from potential anti-competitive behavior.¹ As a condition to our approval, we require that value-added service providers that use the Inmarsat system be permitted to participate in the Inmarsat/ACTOM

¹ CMC is the business unit within Comsat that provides Inmarsat services.

process as described below. In addition, we require Comsat to: (1) provide its customers with annual notification, via bill insert or data transmission, of their right to restrict or permit access to customer proprietary network information ("CPNI"); (2) provide documentation of Inmarsat's decision to permit value-added providers, that use the Inmarsat network, to participate in the Inmarsat/ACTOM SDM process;² (3) obtain approval from customers before using or disclosing customer CPNI for purposes other than provision of the telecommunications services from which the information was derived, or necessary related services; and (4) establish procedures to restrict CPNI access for customers that do not authorize access to their CPNI.

Background

2. The Commission, in its 1993 Structural Relief Order, granted Comsat a waiver of the structural separation requirements to permit Comsat to offer certain value-added maritime services on an unseparated basis, through CMC.³ The value-added services that Comsat was permitted to provide are: (1) enhanced services using, or accessed via, Comsat's maritime satellite services, such as SeaMail and Global Positioning System services; (2) personal computer communications software used in conjunction with Comsat's maritime services; (3) supplemental non-Inmarsat maritime communications services provided on a resale basis, such as the resale of maritime cellular services; and (4) the resale and/or installation of shipboard equipment and programming to be used with Comsat's maritime communications services.

3. As a condition to the waiver, the Commission required Comsat to develop certain nonstructural safeguards to protect Comsat's customers and competitors from potential anti-competitive behavior by Comsat.⁴ The Commission directed Comsat to develop a plan based on

² The Advisory Committee on Technical and Operational Matters ("ACTOM"), is an Inmarsat Council committee responsible for recommending new and modified maritime service specifications and operates Inmarsat's ACTOM System Definition Manual (SDM) process.

³ Communications Satellite Corporation, 8 FCC Rcd. 1531 (1993) (Structural Relief Order). Recently, the International Bureau granted Comsat a similar partial waiver to provide value added services in connection with its Inmarsat aeronautical and land mobile services. The Bureau conditioned its authorization on Comsat filing and the Commission approving accounting and non-accounting safeguards for Comsat's value-added land mobile and aeronautical services. Comsat Corporation Petition for Declaratory Ruling, DA 96-741 (released, May 13, 1996). Pursuant to that Order, Comsat must either file with the Commission non-structural safeguards for its value-added land mobile and aeronautical services or, demonstrate how the maritime non-structural safeguards approved today are sufficient for application to land mobile and aeronautical services. Thus, our order today does not address or pre-judge non-accounting safeguards for value-added land mobile or aeronautical services.

The Commission further conditioned its waiver on Comsat developing accounting safeguards and cost allocation procedures to assure that Comsat's nonjurisdictional value-added maritime services are not subsidized by jurisdictional activities. Comsat filed, and the Commission conditionally granted, Comsat's Cost Accounting Manual. See Comsat Mobile Communications, 10 FCC Rcd. 7639 (1995), recon. pending ("CAM Order"). Comsat filed revisions to its CAM on January 11, 1996 to comply

the nonstructural safeguards outlined in its Computer III Order.⁵ The Commission required Comsat's submission to describe nonstructural safeguards concerning non-discrimination in the provision of maritime satellite services, public disclosure of satellite network information, and the use of customer proprietary network information ("CPNI"). In addition, it required Comsat to certify in its submission that it would not bundle these value-added services with its tariffed jurisdictional services. However, the Commission recognized the differences between the satellite market and the local exchange market underlying the Commission's Computer III Order and stated that it would be flexible in reviewing and approving Comsat's nonstructural safeguard submission, permitting Comsat to substitute more appropriate safeguards where warranted.⁶

4. Comsat filed its nonaccounting compliance plan proposing procedures it would use to prevent it from gaining an unfair competitive advantage when offering certain value-added maritime services. PanAmSat filed comments asserting that consideration of Comsat's proposed nonstructural safeguards would prejudice PanAmSat's Petition for Reconsideration of the Structural Relief Order. PanAmSat did not address the specific proposals outlined by Comsat in its plan. Comsat's Reply states that PanAmSat has not presented a valid reason to delay approval of its nonstructural safeguards.

Discussion

5. Our review of Comsat's nonstructural safeguards in no way prejudices the issues present in PanAmSat's petition for reconsideration of the Commission's Structural Relief Order. The filing of a petition for reconsideration does not estop the Bureau from approving Comsat's Plan. Our action here is subject to any action the Commission may take with regard to PanAmSat's petition.

6. Comsat's plan relies on alternative systems and procedures different from the requirements established in the Computer III Order. Comsat states that its proposals are less burdensome and provide greater assurances of pro-competitive behavior. Comsat contends that, unlike the relationship between the BOCs and competing enhanced service providers, most of its competing value-added providers do not and will not rely on Inmarsat maritime services to provide their offerings.⁷ Comsat also maintains that it seeks to provide value-added services to increase the use of its maritime satellite network and does not anticipate significant revenues from these additional services. It contends that it faces significantly more basic services competition than BOCs and that this competition discourages discriminatory behavior. Finally, Comsat contends that since Inmarsat, not Comsat, controls the satellite system, the potential for discrimination against competing value-added providers is more

with the conditions set out in the CAM Order. The Commission is currently reviewing Comsat's revised submission.

⁵ Computer III Remand Proceeding: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards (Computer III), 6 FCC Rcd. 7571 (1991). See also California v. FCC, 905 F.2d 1217 (9th Cir. 1990).

⁶ Structural Relief Order, supra at 1535.

⁷ Comsat states that maritime cellular service providers, cellular resellers, and manufacturers of shipboard equipment do not require maritime satellite services to provide their services.

circumscribed than exists with AT&T and the BOCs, which control all aspects of their offerings and networks.

7. Provision of Maritime Service: Comsat's value-added competitors must rely on Comsat for timely provision of underlying maritime satellite services. The Commission, in its Structural Relief Order, required Comsat to provide a detailed description of specific procedures Comsat will use to ensure non-discrimination in the timing and quality in providing maritime satellite services.⁸ The Commission also directed Comsat to provide a description of processing procedures for channel assignment and monitoring personnel involved in those procedures as well as the various types of records maintained in this process.

8. Comsat maintains that the Inmarsat system design and operating procedures preclude discriminatory conduct against other value-added service providers in terms of either timely access or quality of service. Comsat states that access to Inmarsat satellites is through automated, demand-assigned procedures that assign channels to land earth stations and individual terminals to the first available channel, on a call-by-call basis, with priority given only to maritime distress and safety calls. Comsat also states that it must also follow Inmarsat's procedures in restoring services during "outages". Comsat further states that its employees do not effect the timing of the demand-assigned process and have no information regarding which calls support value-added services or the identity of the provider.⁹ Comsat contends that the "blind" automated procedures do not permit its employees to identify and record circuits used by different classes of customers.

9. Based on Comsat's representations, we find that existing automated Inmarsat-controlled procedures for assigning channels provide sufficient safeguards to ensure the non-discriminatory provision of maritime satellite services. In view of the automated, demand-assigned system used by Inmarsat, we do not believe that it is necessary to require Comsat to submit periodical reports outlining its procedures used to install and maintain its maritime satellite services. However, if there are system changes, Comsat shall notify the Commission of such changes and amend its compliance submission.

10. Disclosure of Network Information: The Commission also required Comsat to publicly disclose, in a timely manner all network information that affects the offerings of competing enhanced service providers. Specifically, it required Comsat to discuss the type of network information that will and will not be revealed to the public, as well as the timing of disclosure. The Commission noted that some of Comsat's existing procedures, such as its U.S. Customer and Manufacturer Industry Advisory Group (IAG) briefings, already provide the industry with a certain degree of network information.

11. Comsat proposes to continue briefings which provide customers and network information about new or modified maritime service specifications as well as proposed changes Comsat will offer

⁸ Structural Relief Order, supra, at 1535.

⁹ Comsat also notes that since ship owners and operators are responsible for the actual maintenance and repair of shipboard terminals, there is no way for Comsat to discriminate in this area.

its land earth stations. The IAG briefings are open to all manufacturers and Comsat customers who sign a one-time, nondisclosure agreement. Comsat also proposes to provide information to value-added service providers via the Inmarsat/ACTOM System Definition Manual (SDM) process. ACTOM, the Advisory Committee on Technical and Operational Matters, is an Inmarsat Council committee responsible for recommending new and modified maritime service specifications to the Council. These new and modified maritime specifications are developed with participation by the Inmarsat Directorate, Signatories, and terminal manufacturers. All resulting changes to the Inmarsat maritime system are outlined in the SDM, for the various equipment standards (including Inmarsat A, B, C, and M terminals) which are available to all participants who sign a nondisclosure agreement. Comsat contends that all new or modified maritime specifications are included in the relevant SDM's for all services well before they are introduced into the Inmarsat network. It maintains that participation in the ACTOM/SDM process could provide competing enhanced service providers detailed information on new or modified specifications in a timely manner. Comsat proposes that value-added service providers who utilize the Inmarsat system be permitted to participate in this process and states that it will make this recommendation to Inmarsat.

12. We agree with Comsat that participation in Inmarsat's ACTOM SDM process could provide competing value-added providers with network and technical information which affect their offerings. We, therefore, condition our approval of Comsat's non-structural safeguard plan on Inmarsat adopting Comsat's recommendations. Additionally, we conclude that continued conduct of quarterly, open IAG meetings which disclose Inmarsat Council decisions and documents including information about new or modified maritime service specifications will satisfy Commission requirements. We expect these meetings to continue routinely scheduled within two to three weeks of a Council meeting and announced in the trade press. Comsat shall provide IAG participants with the most recent copies of SDMs and continue to provide the Commission with an audio tape of IAG meetings, the papers distributed at the meeting, and a summary of the Council meetings. The Commission will make these materials available for public inspect in the International Bureau's reference room. Finally, we retain jurisdiction to review the efficiency of these arrangements if competing value-added service providers complain they are inadequate to prevent discriminatory conduct.

13. Customer Proprietary Network Information (CPNI): Since the Commission's release of its Structural Relief Order, Congress passed the Telecommunications Act of 1996.¹⁰ Section 702 of the 1996 Act added a new Section 222 to the Communications Act of 1934, as amended,¹¹ which sets forth, among other things, the manner in which telecommunications carriers must maintain the confidentiality of CPNI.¹² CPNI is defined in the 1996 Act as: (1) information that relates to the

¹⁰ Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. §§ 151 et seq.

¹¹ 47 U.S.C. §§ 151 et seq.

¹² 47 U.S.C. § 153(43) defines "telecommunications" as "the transmission, between or among points specified by the user of information of the user's choosing without change in the form or content of the information as sent and received." "Telecommunications service" is defined as the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public regardless of the facilities used. 47 U.S.C. § 153(46). Id.

quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (2) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier. The 1996 Act provides that the term telecommunications carrier includes any provider of telecommunications service, except aggregators.¹³ Comsat, as a provider of telecommunications services, is subject to the CPNI requirements outlined in Section 222.

14. Section 222(c)(1) provides, in part, that "Except as required by law or with the approval of the customer, a telecommunications carrier shall only use, disclose, or permit access to individually identifiable CPNI in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service."¹⁴ The 1996 Act provides three exceptions to Section 222(c)(1) and allows a carrier to use, disclose or permit access to individually identifiable CPNI: (1) to initiate, render, bill, and collect for telecommunications services; (2) to protect the carrier's rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or (3) to provide any inbound telemarketing, referral, or administrative services to the customer and the customer approves of the use of such information to provide such service.¹⁵

15. The Act permits telecommunications carriers to use, disclose, or permit access to aggregate CPNI for other purposes without customer approval.¹⁶ All telecommunications carriers are required to disclose CPNI, upon "affirmative written request" by the customer, to any person designated by the customer.¹⁷

16. Although the CPNI requirements of Section 222 are self-executing, the Commission, in response to requests from telecommunications carriers, issued a Notice of Proposed Rulemaking ("CPNI Notice") to clarify carriers' obligations under Section 222.¹⁸ Our approval of Comsat's Plan is subject to any requirements the Commission will establish in its CPNI proceeding to clarify the obligations of Section 222. We note that any CPNI requirements imposed on Comsat in this order only apply to this proceeding and should not be interpreted as a determination of issues that will be resolved in the Commission's CPNI proceeding.

¹³ 47 U.S.C. § 153(44).

¹⁴ 47 U.S.C. § 222 (c)(1).

¹⁵ 47 U.S.C. § 222(d).

¹⁶ 47 U.S.C. § 222(c)(3). Aggregate customer information is defined as the collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed. 47 U.S.C. § 222(f)(2).

¹⁷ 47 U.S.C. § 222(c)(2).

¹⁸ See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers Use of CPNI, CC Docket No. 96-115 (released, May 17, 1996).

17. The Commission, in its CPNI Notice, seeks comment on specific obligations required by Section 222. First, the Commission seeks comment on the scope of the term "telecommunications service" as used in Section 222. Second, the Commission requests that commenters identify which circumstances mandate written customer authorization and which circumstances permit oral customer approval. Third, the Commission tentatively concludes that telecommunications carriers must notify customers of their right to restrict access to their CPNI. The Commission seeks comment on whether notification can be given orally and simultaneously with a carrier's attempt to seek approval for CPNI use, or whether advance written notification should be required. Finally, the Commission tentatively concludes that all telecommunications carriers must establish effective safeguards to protect against unauthorized access to CPNI by their employees or agents, or by unaffiliated third parties. The Commission tentatively concludes that carriers may adopt some or all of the types of safeguards outlined in Computer III.

18. Pursuant to the Structural Relief Order, Comsat was required to describe the information it would treat as CPNI and establish procedures to ensure that it does not gain an unfair marketing advantage from preferential access to this information.¹⁹ Specifically, the Commission instructed Comsat to propose a way of limiting access by its value-added service personnel to a jurisdictional customer's CPNI if the customer declines to authorize such access by prior written authorization or by other means.²⁰ The Commission also required Comsat to ensure that this CPNI is available to competing service providers on the same terms and conditions that Comsat makes CPNI available to its own value-added service operations consistent with customer authorization.²¹

19. In Comsat's Plan, Comsat contended that it should not be required to develop CPNI safeguards for several reasons. First, Comsat claimed that it does not enjoy preferential access to the CPNI of its customers since it faces substantial intra-system competition for land earth station traffic.²² Comsat maintained that, while it possesses CPNI for ship-to-shore traffic, it only receives aggregated information for shore-to-ship traffic. Second, Comsat contended that it is unlikely to possess the CPNI for shore-to-ship enhanced service providers or non-customers such as cellular providers, software merchants, terminal manufacturers, and resellers. Third, Comsat claimed that currently only one U.S. value-added service provider, Oceansat, uses maritime satellite services to provide its offerings.²³

¹⁹ Structural Relief Order, supra at 1534.

²⁰ Id at 1535.

²¹ Id

²² Comsat asserts that it could face competitive harm in its maritime satellite operations if it is required to disclose the CPNI of its customers or users to competing value-added providers who could potentially align themselves with Comsat's maritime satellite service competitors. Comsat also argues that it would not be equitable to impose CPNI obligations on Comsat that are not required of its land earth station competitors (e.g., IDB Communications and foreign Signatories).

²³ Comsat asserts that Oceansat uses the facilities of IDB Communications and not those of Comsat.

20. Comsat further requested that it not be required to disclose customer CPNI to any basic service competitor which offers value-added services unless the competitor establishes safeguards to ensure that its maritime satellite operations will not obtain such information. Comsat also requested that it not be required to create "maritime satellite service only" personnel to serve customers that seek to restrict CPNI disclosure. Comsat stated that a requirement to create separate "maritime services only" personnel and restrict access to customers' CPNI would impose unnecessary administrative expenses without yielding commensurate public interest benefits. Comsat stated that it would have to modify its databases to restrict CPNI access to its integrated sales force.

21. We find Comsat has not been sufficiently responsive to the Commission's requirement that, as a condition to the Commission's partial waiver of structural separation, Comsat file CPNI safeguards. Comsat did not petition for reconsideration of this aspect of the Commission's decision. CPNI rules are intended to balance considerations of efficiency, competitive equity, and privacy. The Commission determined that Comsat's access to customer CPNI may place it at an unfair competitive advantage in the value-added services market. Thus, the Commission required Comsat to propose a way of limiting access by value-added service personnel to a jurisdictional customer's CPNI if the customer declines to authorize such access by prior written authorization or by other means. The Commission also directed Comsat to ensure that this proprietary information is available to competing service providers on the same terms and conditions that Comsat makes CPNI available to its own value-added service operations.²⁴ The CPNI requirements subsequently established in the 1996 Act reinforce the competitive and privacy concerns associated with a carrier's access to customer CPNI.²⁵

22. Due to the passage of the 1996 Act, Comsat must now comply with the CPNI provisions in Section 222. Accordingly, Comsat may only use, disclose, or permit access to individually identifiable CPNI in its provision of (1) telecommunications service from which such information is derived, or (2) services necessary to, or used in, the provision of such service. Comsat must obtain customer approval before using CPNI for any other purpose. Comsat must also disclose a customer's CPNI to any person designated by the customer in a written request. Consistent with the 1996 Act, Comsat may use and disclose aggregate CPNI for purposes other than the provision of telecommunications service.

23. We also require Comsat to provide annual notification to its customers of their CPNI rights. Notification will provide customers with information required to make an informed decision as to whether or not to restrict access to their CPNI. COMSAT maintains in its submission that it will annually notify its customers of their CPNI rights through a bill insert, transmit notices. For the purposes of this proceeding, we find that notification via a bill insert or data transmission would provide customers with sufficient written notice of their CPNI rights. Comsat may select either method to inform customers of their CPNI rights. We note that this notification requirement may be superseded by any subsequent requirements the Commission may establish in its CPNI proceeding.

24. Comsat argues that a requirement to create "maritime-only" personnel would impose

²⁴ Id.

²⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996).

unnecessary administrative expenses without public interest benefits. In addition, Comsat argues that the costs associated with modification of its databases to restrict CPNI access to its integrated sales force is not justified. However, Comsat has not proposed alternative procedures to restrict CPNI access absent customer approval. Pursuant to Section 222, Comsat must restrict access to CPNI for purposes other than the provision of telecommunications service unless a customer specifies otherwise. Failure to restrict access to CPNI for customers who do not authorize other uses of CPNI would defeat the customer's decision to withhold authorization. We require Comsat to identify procedures it will use to restrict access to customer CPNI by its employees or agents, or unaffiliated third parties.

25. Unbundled Services: In the *Structural Relief Order*, the Commission prohibited Comsat from bundling any maritime value-added services with its tariffed jurisdictional services.²⁶ The Commission required Comsat to certify that it will provide these services on an "unbundled" basis to ensure that customers are not forced to buy unwanted, Comsat-supplied non-jurisdictional maritime value-added services in order to obtain necessary jurisdictional services. The Commission required Comsat to certify that it will comply with the Commission's unbundling requirement. Comsat included, as part of its submission, certification that it will make its maritime satellite and value-added services available to its customers on an unbundled basis.

Conclusion

26. We conclude that Comsat's nonstructural safeguards outlined in its Non-Accounting Compliance Plan are sufficient to protect Comsat's customers and competitors from potential anti-competitive conduct, subject to several conditions. First, we condition authorization of Comsat's Plan on documentation of Inmarsat's decision to permit value-added providers, that use the Inmarsat network, to participate in the Inmarsat/ACTOM SDM process. Second, we require Comsat to provide its customers with annual notification, via bill insert or data transmission, of their right to restrict or permit access to customer proprietary network information (CPNI). Third, we require Comsat to obtain approval from customers before using or disclosing customer CPNI. Fourth Comsat must establish procedures to restrict CPNI access for customers that do not authorize access to their CPNI. Finally, Comsat is required to disclose CPNI to others consistent with customer approval.

Ordering Clauses

27. Accordingly, IT IS ORDERED that pursuant to Section 503 of the Communications Act of 1934, 47 U.S.C. §752, the nonstructural safeguards as described Comsat's Non-Accounting Compliance Plan are APPROVED, subject to the conditions below.

28. IT IS FURTHER ORDERED that authorization of Comsat's Plan IS CONDITIONED upon documentation of Inmarsat's decision to permit value-added providers, that use the Inmarsat network, to participate in the Inmarsat/ACTOM SDM process.

²⁶ Structural Relief Order, 8 FCC Rcd. at 1536.

29. IT IS FURTHER ORDERED that Comsat SHALL notify the Commission of any changes in Inmarsat's blind channel processes for maritime satellite services.

30. IT IS FURTHER ORDERED that, Comsat SHALL establish and file with the Commission procedures to restrict access by its employees, agents, or unaffiliated parties, to customer CPNI in instances where approval has not been granted.

31. IT IS FURTHER ORDERED that approval of Comsat's Nonaccounting Compliance Plan is subject to the outcome of the Commission's decision in its proceeding regarding Implementation of the Telecommunications Act of 1996 and Telecommunications Carriers Use of CPNI, CC Docket No. 96-115 (May 17, 1996).

32. IT IS FURTHER ORDERED that Comsat shall provide its customers with annual notification, via bill insert or data transmission, of their right to authorize or restrict Comsat's access to their CPNI for marketing of value-added services.

33. IT IS FURTHER ORDERED that Comsat shall, upon affirmative written customer request, disclose CPNI to any person designated by the customer.

34. IT IS FURTHER ORDERED that this decision is without prejudice to ultimate Commission action on PanAmSat's Petition for Reconsideration of the Commission's Memorandum Opinion and Order, in this proceeding granting Comsat's request for a waiver of the Commission's structural separation requirements.

35. This order is issued under Section 0.261 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of the date of public notices of this order. See Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION



Donald H. Gips
Acting Chief, International Bureau