

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Applications of) Fee Control Nos. 9901088210298001 &
Lockheed Martin Corporation) 9905288210337001
and Lockheed Martin Global)
Telecommunications, Inc.)

MEMORANDUM OPINION AND ORDER

Adopted: June 13, 2001; Released: June 21, 2001

By the Commission:

I. INTRODUCTION

1. The Commission has before it two Applications for Review, one filed by Lockheed Martin Corporation (Lockheed Martin) and the other filed by Lockheed Martin Global Telecommunications, Inc. (LMGT) on behalf of LMGT Astro License, LLC (LMGT Astro) (collectively, Lockheed), on December 27, 2000. Lockheed seeks review of decisions of the Office of Managing Director denying Requests for Partial Waiver and Refund of Fees filed by Lockheed.¹ The Applications for Review involve similar situations and issues; therefore we will address them together.² For the reasons discussed below we deny the Applications for Review.

II. BACKGROUND

2. Lockheed Martin applied for and received authority to assign its authorizations to launch and operate nine Ka-Band Astrolink System geostationary satellites (Astrolink System) to LMGT Astro, an indirect wholly owned subsidiary of Lockheed Martin.³ LMGT Astro then applied for

¹ See letters dated October 18, 2000, from Mark A. Reger, Chief Financial Officer, to Raymond G. Bender, Esq.

² The Applications for Review present virtually identical arguments; the one difference is that the Lockheed Martin Application for Review presents an additional argument regarding the pro forma nature of its assignment to LMGT Astro.

³ See File No. SAT-ASG-1990107-00008 (granted Feb. 25, 1999).

and received authority to assign its authorization to launch and operate the Astrolink System satellites to Astrolink International, LLC (Astrolink).⁴ Lockheed also filed requests that the Commission partially waive and reduce the related application fees set forth in section 8 of the Communications Act of 1934, as amended, 47 U.S.C. § 158. Section 8 provides that the application fee for assignment for geostationary space stations is to be calculated per satellite.⁵ The fees associated with an application to assign the Astrolink System were thus \$57,510.00, or \$6,390.00 per satellite.⁶ Lockheed asked that the Commission reduce the application fees in these matters to \$8,810.00 each, which would correspond to the application fee under section 8 for an assignment of authorization for a low-earth orbit (or non-geostationary) satellite system.⁷ Lockheed argued in the alternative that the Commission should calculate the application fees on a per orbit basis rather than per satellite as specified in the statute.⁸ Because the Astrolink System is authorized to use five orbital slots for nine satellites, per orbit calculation would have reduced the instant application fees to \$31,950.00 each.

3. The Office of Managing Director, by the Chief Financial Officer, denied Lockheed's requests. The Chief Financial Officer found that Lockheed had not demonstrated that the public interest required for waiver and reduction of the fees established by Congress.⁹

III. DISCUSSION

4. In the Applications for Review, Lockheed argues that the Office of Managing Director erred in not reducing the application fees in these matters.¹⁰ For the reasons below, we deny the Applications for Review.

5. Lockheed first argues that statutory application fees must be compensatory in nature and bear a relationship to the expenses the Commission expects to incur in processing the instant application.¹¹ Lockheed states that the fee in this instance far exceeds the costs the Commission

⁴ See *Application of LMGT Astro Licensee, Assignor and Astrolink International, LLC, Assignee*, 15 FCC Rcd 21777 (1999).

⁵ 47 U.S.C. § 158(g)(Common Carrier Services)(16.c).

⁶ In section 8, Congress provided that the Commission is to adjust the schedule of application fees every two years to reflect changes in the Consumer Price Index. 47 U.S.C. § 158 (b)(1). The Commission has done so, resulting in the increase of fees from the statutory schedule to the fee of \$57,510.00 at the time of the application at issue. 47 C.F.R. § 1.1107(9)(b) (1999).

⁷ Lockheed Martin Request for Partial Waiver and Refund of Fees (Lockheed Martin Request) at 1; LMGT Request for Partial Waiver and Refund of Fees (LMGT Request) at 1.

⁸ Lockheed Martin Request at 4; LMGT Request at 3-4.

⁹ See letters dated October 18, 2000, from Mark A. Reger, Chief Financial Officer, to Raymond G. Bender, Esq.

¹⁰ Lockheed Martin Application for Review at 6; LMGT application for Review at 6-8.

¹¹ In the Applications for Review, Lockheed cites *Nat'l Cable Television Ass'n v. FCC*, 554 F.2d 1094 (D.C. Cir. 1976), for the proposition that a "fee" is a payment for a privilege or service rendered and cannot exceed the value

could incur in processing its applications; Lockheed Martin argues that this is particularly true since its application involved a pro forma transfer. We have stated, however, that there is “no justification in the statute or legislative history for apportioning fees according to the actual work done on any particular application.”¹² We also have noted that “processing costs were but one factor in the rough calculus that resulted in the legislated fees.”¹³ Further, in implementing section 8, we stated that “[i]t is not our intention to make individualized determinations of the ‘appropriate fee.’ Rather, except in unusual cases in which the public interest requires otherwise, we will levy the fee as determined by Congress.”¹⁴ In addition, unlike in some of the services in the statutory fee schedule, Congress did not elect to assess lower fees for pro forma transfers of geostationary satellites.¹⁵ Rather, it assessed the same fee for all assignments and transfers of these satellite licenses.¹⁶ Therefore, we shall not use our waiver authority either to make individualized determinations of costs or generally to lower fees in circumstances where Congress has chosen not to do so.

6. Lockheed also argues that the Office of Managing Director should have addressed in the waiver process the disparity between the higher fees Congress set for assignment of geostationary satellite systems and the lower fees for assignments of non-geostationary satellite systems.¹⁷ For example, Lockheed Martin argues that it should not have to pay fees of \$57,510.00 to accomplish an internal restructuring, when an applicant in the non-geostationary satellite system service would pay only \$8,810.00 for an assignment involving a third party.¹⁸ Lockheed further argues that reducing the instant geostationary satellite application fees would preserve and promote competition among all providers of satellite communications services.¹⁹

7. Lockheed’s arguments do not justify a waiver. Congress set the application fee for

of such services. LMGT Application for Review at 6-7; Lockheed Martin Application for Review at 7. That case, however, specifically dealt with a fee assessed by the agency under the Independent Office Assessment Act (IOAA) (now codified at 31 U.S.C. § 9701). 554 F.2d at 1096. The Supreme Court had held that the statutory language and intent of Congress in the IOAA was to require agencies assessing fees under the IOAA to base such fees on the value to recipients, and the Court of Appeals for the District of Columbia Circuit thus analyzed the IOAA fees at issue under that standard. 554 F.2d at 1097. The fees at issue in the instant matters, however, were not established under the IOAA, but rather are fees specifically set by Congress.

¹² *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 949 (1987).

¹³ *Id.*

¹⁴ *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 3 FCC Rcd 5987 (1988).

¹⁵ *See, e.g.*, 47 U.S.C. § 158(g)(Mass Media Services)(1.e).

¹⁶ *Id.*, § 158(g)(Common Carrier Services)(16.c).

¹⁷ Lockheed Martin Application for Review at 6-8; LMGT Application for Review at 6-8.

¹⁸ Lockheed Martin Application for review at 5; LMGT Application for Review at 5.

¹⁹ Lockheed Martin Application for review at 10; LMGT Application for Review at 9.

assignment of non-geostationary satellite systems per request, rather than per satellite.²⁰ Thus, the fee for assignment of non-geostationary satellite systems is not multiplied by the number of satellites in the system, as is statutorily required for geostationary systems, and is correspondingly lower. Lockheed's concerns about any disparity in fees for geostationary and non-geostationary satellites thus reflect its general disagreement with the statutory fee schedule. Our waiver authority, however, is not intended to correct for perceived inequalities in the statute itself, but for good cause shown in individual situations.

8. Lockheed argues in the alternative that the Office of Managing Director should have calculated the instant application fees on a per orbit basis, rather than on a per satellite basis as provided in the statute.²¹ In this regard, Lockheed states that the Commission should follow the framework of the Managing Director's prior decisions permitting waiver and reduction of fees for authority to launch and operate geostationary satellites based on the number of orbital slots rather than the number of satellites.²² Lockheed states "there is no apparent reason" not to apply the same reduction calculation in the assignment context.²³

9. The cited decisions of the Managing Director are inapposite. These decisions were based on a conclusion that the change in the satellite technology at issue had not been anticipated when Congress established the fees in section 8 for satellite launch and operation authority. In contrast, Congress was clearly aware that licensees of geostationary satellites might assign multiple satellites, as would licensees of non-geostationary satellite systems. Nevertheless, Congress specified that licensees in Lockheed's position would pay assignment application fees per satellite and licensees of non-geostationary satellite systems would pay assignment application fees per request. Therefore, as discussed above, because there are no special circumstances here justifying a waiver, we shall not use our waiver authority to lower fees in circumstances where Congress has chosen not to do so.

10. Finally, Lockheed further argues that to reduce the fee by calculating it on a per orbit basis

²⁰ 47 U.S.C. § 158(g)(22)(c).

²¹ Lockheed Martin Application for Review at 12-14; LMGT Application for review at 10-12.

²² In September 1995, the Managing Director established an interim filing fee payment for applicants for authority to launch and operate Ka-Band satellites. Federal Communications Commission, Public Notice 56031, Interim Filing Fee Payment Established for Ka-Band Satellite Applications (Sept. 28, 1995). Based on the evolution of satellite technology and the multiple satellite systems planned for deployment, the Managing Director tentatively concluded that the per satellite authorization fee may not be suitable for this service. *Id.* The Managing Director instructed applicants to file fees for applications for authorization to launch and operate based on the number of orbital locations the system would occupy, rather than on the number of satellites they plan to deploy. *Id.* As Lockheed notes, the Office of Managing Director since has waived and reduced filing fees for applications for authority to launch and operate on a similar basis, permitting fees to be calculated on a per orbit basis if the applicant is requesting authority to launch and operate technically identical satellites. *See* letter of June 22, 2000, from Mark A. Reger, Chief Financial Officer, Federal Communications Commission, to Stephen D. Baruch, Esq.

²³ Lockheed Martin Application for review at 15; LMGT Application for Review at 13.

would reduce the Congressionally mandated fees to “a more realistic amount.”²⁴ In this, Lockheed essentially is reiterating the argument, which we have rejected, that the Commission should not collect the statutory application fees in this matter because the applicant does not believe they represent the costs the Commission will incur in processing the individual application. After careful review of the issues raised in the Application for Review, we therefore do not find any basis for modifying the decision of the Office of Managing Director denying Lockheed’s Request for Partial Waiver and Refund of Fees.

IV. ORDERING CLAUSES

ACCORDINGLY, IT IS ORDERED that the Applications for Review, filed on December 27, 2000, by Lockheed Martin Corporation and Lockheed Martin Global Telecommunications, Inc. ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

²⁴ Lockheed Martin Application for review at 16; LMGMT Application for Review at 14.