State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program. However, the limited discount program offered by the Secretary is not subject to section 204 because no financial assistance for capital construction is awarded.

List of Subjects in 34 CFR Part 614

Colleges and universities, Education, Housing, Loan programs—housing and community development.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.142—College Housing Program)

Dated: December 19, 1984.

T.H. Bell,

Secretary of Education.

The Secretary amends Part 614 of Title 34 of the Code of Federal Regulations as follows:

PART 614—COLLEGE HOUSING PROGRAM

§ 614.63 [Amended]

In § 614.63(b)(1), "October 1, 1984" is amended to read "October 1, 1985".

[FR Doc. 84-33471 Filed 12-24-84; 8:45 am]

BILLING CODE 4000-01-M

VETERANS ADMINISTRATION

38 CFR Part 17

Definition of Medical Services

AGENCY: Veterans Administration.

ACTION: Final regulation amendments.

SUMMARY: The Veterans Administration is amending its medical regulations (38 CFR Part 17) to conform with provisions of Pub. L. 98-160, Veterans' Health Care Amendments of 1983. The amendment redefines medical services to include preventive health care and provides continuing treatment eligibility for certain persons disabled as a result of VA treatment.

EFFECTIVE DATE: November 21, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph F. Fleckenstein, Medical Administration Service (136F), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389-2337.

SUPPLEMENTARY INFORMATION: Pub. L. 98-160 amended 38 U.S.C. 601(6)(A)(i) to include preventive health care services as part of the definition of medical services. The law also amended 38 U.S.C. 610(a)(3) relating to eligibility for VA hospital and nursing home care. That section authorizes care for a person receiving VA compensation. The statutory amendment authorizes continuing eligibility for care for certain persons who had received compensation for an injury or disability as a result of receiving VA care or as a result of participation in a rehabilitation program under 38 U.S.C. chapter 31. Continuing hospital and nursing home care eligibility is provided when the individual's compensation payments are discontinued due to receiving payments from a judgment or tort settlement in connection with the injury or disability, so long as such eligibility is provided for in the court judgment or settlement.

On pages 34533 and 34534 of the **Federal Register** of August 31, 1984, a notice of proposed rulemaking was published for 38 CFR 17.30(m)(1) and 17.48(b)(1). Interested persons were given 30 days to submit comments, suggestions or objections. No comments were received. The regulations are adopted as final without change.

The Administrator has determined that this amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator certifies that this amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this change will regulate only the eligibility of individuals to these benefits.

The Catalog of Federal Domestic Assistance Numbers are: 64.002, 64.009, 64.010, and 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Government programs—Health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: November 29, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 17—[AMENDED]

38 CFR Part 17, MEDICAL, is amended as follows:

1. In § 17.30, paragraphs (l) and (m)(1) are revised to read as follows:

§ 17.30 Definitions.

* * * * *

(l) *Hospital care.* The term "hospital care" includes:

(1) Medical services rendered in the course of hospitalization of any veteran and transportation and incidental expenses pursuant to the provisions of § 17.100;

(2) Such mental health services, consultation, professional counseling, and training for the members of the immediate family or legal guardian of a veteran, or the individual in whose household such veteran certifies an intention to live, as may be essential to the effective treatment and rehabilitation of a veteran or dependent or survivor of a veteran receiving care under the provisions of § 17.54(c) (38 U.S.C. 601(5)), as amended by Pub. L. 93-82, sec. 101(b); Pub. L. 94-581, sec. 102(1); and

(3)(i) Medical services rendered in the course of the hospitalization of a dependent or survivor of a veteran receiving care under the provisions of § 17.54(c), and (ii) transportation and incidental expenses for such dependent or survivor of a veteran who is in need of treatment for any injury, disease, or disability and is unable to defray the expense of transportation. (38 U.S.C. 601(5), as amended by Pub. L. 93-82, sec. 101(b); Pub. L. 98-160)

(m) *Medical services.* The term "medical services" includes, in addition to medical examination, treatment, and rehabilitative services:

(1) Surgical services, dental services and appliances as authorized in §§ 17.60(f), 17.120, 17.123 and 17.123a, optometric and podiatric services, (in the case of a person otherwise receiving care or services under this chapter) the preventive health care services set forth in 38 U.S.C. 662, and except for veterans

authorized outpatient care under § 17.60(e), wheelchairs, artificial limbs, trusses and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as are medically determined to be reasonable and necessary. (38 U.S.C. 601(6)(A)(i); sec. 106, Pub. L. 98–160)

* * * * *

2. In § 17.48, paragraph (b) is revised to read as follows:

§ 17.48 Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care.

* * * * *

(b)(1) Under paragraph (c)(1) of § 17.47, veterans who are receiving disability compensation awarded under § 3.800 of this title, where a disease, injury or the aggravation of an existing disease or injury occurs as a result of VA examination, medical or surgical treatment, or of hospitalization in a VA health care facility or of participation in a rehabilitation program under 38 U.S.C. chapter 31, under any law administered by the VA and not the result of his/her own willful misconduct. Treatment may be provided for the disability for which the compensation is being paid or for any other disability. Treatment under the authority of § 17.47(c)(1) may not be authorized during any period when disability compensation under § 3.800 of this title is not being paid because of the provisions of § 3.800(a)(2), except to the extent continuing eligibility for such treatment is provided for in the judgment for settlement described in § 3.800(a)(2) of this title. (38 U.S.C. 610(a); sec. 701, Pub. L. 98–160)

(2) Under paragraph (c)(3) of § 17.47, "No adequate means of support"—when an applicant is receiving an income of $415 or more per month from any source for personal use, this fact will be considered prima facie evidence of adequate means of support. This is subject to rebuttal by a showing that such income is not adequate to provide the care required by reason of the veteran's disability or that the income is not available for the veteran's use because of other obligations such as contributions in whole or in part to the support of a spouse, child, mother or father. In all such cases of alleged inadequate means of support, the circumstances will be submitted to the Director for decision. (38 U.S.C. 610(a); sec. 701, Pub. L. 98–160).

* * * * *

[FR Doc. 84–33374 Filed 12–24–84; 8:45 am]
BILLING CODE 8320–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 82–540; FCC 84–605]

Modification of Policy on Ownership and Operation of U.S. Earth Stations That Operate With the INTELSAT Global Communications Satellite System

AGENCY: Federal Communications Commission.

ACTION: Report and order; policy statement.

SUMMARY: The FCC adopts a more liberal earth station ownership policy which modifies the current policy on the ownership and operation of U.S. international earth stations that operate with the INTELSAT Global Communications Satellite System. The joint ownership arrangement that the FCC established in 1966 addressed the needs of a nascent satellite telecommunications industry. The FCC has, however, always recognized the dynamic nature of the satellite and earth station technologies. The FCC thus finds that reformulation of its current policy is timely in light of significant advancements in both satellite and earth station technologies and the transformation of INTELSAT from an organization with few members managed by Comsat to a financially stable entity with its own management staff and over one hundred members. The FCC is granted broad discretion in fashioning an earth station ownership policy under section 201(c)(7) of the Communications Satellite Act of 1962.

DATES: By January 18, 1985: (1) All operating licenses held by Comsat on behalf of all ESOC members, or by all ESOC members jointly, for each of the international earth stations shall be amended to reflect new ownership interests as set forth in order; (2) Comsat subsidiary shall file section 214 application for certification as common carrier to provide earth station services via INTELSAT; and (3) Comsat WSD shall file an application: (a) To modify its 214 authorizations in order to transfer earth station activities to the separate subsidiary; and (b) to transfer to this subsidiary all Title III radio licenses issued to WSD on its own behalf or on behalf of ESOC for the operation of satellite earth stations via INTELSAT. By February 1, 1985: Comsat shall file tariffs for INTELSAT space segment through WSD and file earth station tariffs through separate common carrier subsidiary, to become effective on 45 days notice.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Laura R. Stein, Common Carrier Bureau, International Facilities Division (202) 632–7265.

SUPPLEMENTARY INFORMATION:

Report and Order

In the matter of modification of policy on ownership and operation of U.S. earth stations that operate with the INTELSAT Global Communications Satellite System; CC Docket No. 82–540.

Adopted: December 4, 1984.
Released: December 18, 1984.

By the Commission.

1. On August 17, 1982, we initiated through the release of a Notice of Inquiry (NOI) the above-captioned proceeding to solicit comments on whether our current policy, established in 1966, on the ownership and operation of U.S. earth stations which operate with the International Telecommunications Satellite Organization (INTELSAT) global communications satellite system still best serves the public interest.[1] On April 20, 1984, we issued a Notice of Proposed Rulemaking (NPRM) addressing the concerns of both the Commission and interested parties on the status of our current earth station ownership policy.[2] In response to the NPRM, comments were filed by the American Telephone and Telegraph Company (AT&T), TRT Telecommunications Corporation (TRT), American Satellite Company (ASC), Home Box Office, Inc. (HBO), RCA Global Communications, Inc. (RCA), MCI International (MCII), ITT World Communications Inc. (ITT), Federal Express Corporation (Federal Express), U.S. Satellite Corporation, Inc. (USSC), the Hawaiian Telephone Company (Hawaiian), the National Telecommunications and Information Administration (NTIA), Equatorial Communication Services (Equatorial), the Communications Satellite Corporation (Comsat), International Relay, Inc. (IRI), Satellite Gateway Communications, Inc. (SGC), Gannett Satellite Information Network, Inc. (Gannett), Public Broadcasting Service (PBS), and the American Broadcasting Companies, Inc. (ABC), CBS Inc. (CBS), and the National Broadcasting Company, Inc. (NBC), (the "Networks"),

[1] Notice of Inquiry, Modification of Policy on Ownership and Operation of U.S. Earth Stations that Operate with the INTELSAT Global Communications Satellite System, 90 FCC 2d 1458 (1982).

[2] 97 FCC 2d 444 (1984).

filing jointly. Reply comments were submitted by AT&T, Comsat, IRI, ITT, RCA, Hawaiian, TRT, the Networks, and Walter Hinchman Associates, Inc. (Hinchman).

2. Below we shall summarize: (a) The existing earth station ownership policy; (b) the Notice of Inquiry and the filings elicited therefrom, including Comsat's wholesale/retail proposal; (c) subsequent developments; (d) the Notice of Proposed Rulemaking; and (e) the comments and reply comments to the Notice of Proposed Rulemaking. We then analyze the filings and conclude that a more open and flexible earth station ownership policy will best serve the public interest by increasing efficiencies and reducing costs to users.

I. Background

A. Existing Commission Policy

3. Our current earth station policy was enunciated in 1966 [3] and was implemented in 1967 by Comsat and the U.S. international service carriers through a carrier-created Agreement establishing the Earth Station Ownership Committee (ESOC).[4] Under our existing policy, international earth stations in the United States are owned by a consortium of carriers, including Comsat as well as certain U.S. international service carriers. These international service carriers are AT&T, RCA, ITT, WUI and Hawaiian. Comsat, through its World Systems Division (WSD), has a fifty-percent ownership share and the international service carriers share the remaining fifty-percent interest in approximate proportion to their usage of the facilities.[5] Comsat serves as manager of these earth stations, subject to the overall control and guidance on basic policy and investment matters by a committee composed of all co-owners.[6] Voting shares within this committee are in accordance with ownership percentages.

4. In accordance with the ESOC Agreement, as amended,[7] the carriers set up separate earth station ownership consortiums for the contiguous United States, Hawaii, and Guam. The Agreement also prescribes, in accordance with the 1966 policy decision, the ownership share percentages for Comsat, AT&T, Hawaiian, ITT, RCA, and WUI in each consortium.[8] Pursuant to the Agreement, ESOC earth stations are made available to Comsat for the purpose of furnishing earth station and space segment communications services under applicable tariffs to authorized carriers and users. Comsat, in turn, compensates the carriers for their investment by paying the ESOC owners a monthly rental rate for each half-circuit established through the stations.

B. Notice of Inquiry

5. For the purpose of eliciting discussion on possible changes in our earth station ownership policy and the carriers' ownership arrangements, the NOI distinguished between two classes of earth stations: General purpose and special purpose.[9] The NOI also distinguished between existing stations and new stations.[10] With regard to general purpose earth stations, we solicited comments on the merits of individual carrier ownership versus continued consortium ownership of existing and new earth stations. We also requested parties to propose regulatory criteria that we should apply in deciding whether to authorize new general purpose earth stations. As to special purpose earth stations, we requested comment only on whether new special purpose earth stations should be owned and operated in a competitive fashion or in an ESOC-like manner. Existing special purpose earth stations are independently owned outside of ESOC and we did not envision moving these facilities into an ESOC-like consortium. We further sought comment on regulatory criteria for considering individual applications for special purpose earth stations.

6. We also asked for comments on the relationship of Comsat's corporate structure to the issues in the proceeding. Several of the issues we identified were: (a) Whether Comsat's current ownership share of general purpose earth stations should be in the parent company's World Systems Division (WSD), as it is now, or transferred from WSD to a Comsat subsidiary; (b) whether Comsat's ownership of new earth station should be in the WSD or in a separate subsidiary; and (c) whether Comsat's existing tariff, which bundles the earth station and space segment elements into one rate, should be unbundled if entities other than Comsat or ESOC were to be authorized to construct and operate international earth stations. Finally, we requested comment on the proper role of Comsat, as the U.S. Signatory to INTELSAT, in any ownership arrangement with particular emphasis on: (a) The method of coordinating U.S. earth station investment and operation with INTELSAT space segment; and (b) the extent of carrier and public participation in Comsat/INTELSAT forums.

7. The comments received in response to the NOI indicated that all parties,[11]

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[3] Amendment of Part 25 of the Commission's Rules and Regulations With Respect to Ownership and Operation of Initial Earth Stations in the United States for Use in Connection with the Proposed Global Commercial Communication Satellite System ("*Second Report and Order*"), 5 FCC 2d 812 (1966).

[4] The joint licensees entered into the Agreement consistent with the Commission's *Second Report and Order*. The carriers have operated the international earth stations sinced the 1960's pursuant to the Commission's policy decisions, construction/transfer orders, and the ESOC Agreement.

[5] While the earth stations are jointly owned, Comsat is also the sole U.S. investor/provider of INTELSAT space segment and is also the sole U.S. representative to INTELSAT.

[6] RCA serves as manager of the ESOC earth station in Guam, the smallest consortium.

[7] The Agreement was amended to add Guam as a separate consortium. *See RCA Global Communications, Inc.*, 18 FCC 2d 1037 (1969). Puerto Rico/Virgin Islands is also a consortium but it has no international earth stations at this time.

[8] Because the ESOC members were unable to agree among themselves upon an allocation of ownership shares, we set the initial ownership percentages in proportion to the carriers' projected use of the stations. Since the initial allocation of shares, we have approved requests by ESOC members for modifications in ownership shares, including: (a) Purchase by AT&T of ITT's interest in the four contiguous U.S. stations, American Telephone and Telegraph Company and ITT World Communications Inc., File No. I–P–C–81–010 (released June 10, 1981), and; (b) purchase by RCA of ITT's interest in the Guam earth station, RCA and ITT, File No. I–S–P–82–004 (released February 10, 1983). We have also authorized 100 percent ownership of earth stations to Comsat where it is directly serving end users (TV service via the Santa Paula, California earth station) and where the local carrier does not desire joint ownership (American Samoa, Palau, Saipan, Marshall Islands, and Micronesia).

[9] General purpose earth stations are those Standard A (30–32 meters in diameter), Standard B (10–13 meters in diameter), and Standard C (18–19 meters in diameter) facilities with which all U.S. international carriers interconnect their operating centers in order to offer international switched and private line services to the public. These earth stations are owned by ESOC. Special purpose earth stations are Standard B or non-standard earth stations designed to meet private line needs of a dedicated user or group of users. Such stations are envisioned to be located near a customer's premises in order to reduce landline interconnection costs, improve quality of service, or both.

[10] Existing stations were considered to be stations that have been authorized, whether or not they were actually operating or under construction.

[11] Respondents were Comsat, AT&T, ITT and All America Cables filing jointly, RCA, Western Union Telegraph Company, TRT Telecommunications Corporation, American Satellite Company, Home Box Office, National Public Radio, American Petroleum Institute, and ABC, NBC, and CBS filing jointly, the Departments of Defense and Justice, and M/A–COM.

with the exception of Comsat, favored an open entry policy and proposed with respect to new general and special purpose earth stations that any carrier be allowed to apply to the Commission for authorization subject only to the "public interest, convenience, and necessity" test of section 201(c) of the Communications Satellite Act of 1962.[12] These parties claimed that a more competitive earth station ownership policy, coupled with an unbundling of Comsat's tariff, would lead to lower end-to-end rates without compromising service quality or injuring Comsat. Comsat favored the preservation of the current ownership arrangement and argued that independent ownership would promote a proliferation of earth stations that could jeopardize the low cost and high quality service provided by the existing arrangement, thus harming U.S. and INTELSAT interests.

8. Subsequent to the filing of comments and reply comments, Comsat, in recognition that its views were not supported by the other parties, proposed a new approach that it believed would preserve the benefits of the current arrangements (e.g., efficient use of the INTELSAT system and the ability of actual and potential U.S. carriers which are competitors in the provision of end-to-end international communications services to obtain fair and equitable access to the INTELSAT system) while being more acceptable to other interested parties.[13] Comsat's proposal contemplated that the ESOC members would negotiate among themselves the dissolution of the current ownership arrangement and convert the existing ESOC stations into "wholesale/retail" combination stations at which Comsat's international "wholesale" facilities and operations, as well as the carriers' ene-to-end "retail" facilities and operations, would be collocated. Comsat would acquire the land, buildings, antennas and most of the common electronic equipment. Comsat would then provide earth station services and the INTELSAT space segment to the end-to-end service carriers who in turn would provide a through service to their customers. Following a three-year moratorium, the "retail" service carriers would have the option of continuing to participate in joint earth station ownership arrangements and/or seek authority to construct and operate their own general purpose and most types of special purpose earth stations.[14]

9. Comments received with regard to Comsat's "wholesale/retail" facilities proposal were divided amont those parties who favored the proposal as a starting point for negotiations, those totally opposed to it, and those, including AT&T, who proposed alternative approaches. All parties opposed the proposed three-year moratorium on new applications for all general purpose and most special purpose earth stations by arguing that any moratorium could give to Comsat an anticompetitive head start in the earth station service market.

C. Recent Developments

10. Several recent developments in the international telecommunications arena, some of which we noted in the NPRM, highlight both the tensions which exist within ESOC and the need for us to re-examine our current earth station ownership policy. First, on April 9, 1984, we denied applications filed by RCA and WUI for review of an order issued pursuant to delegated authority by the Chief, Common Carrier Bureau[15] which resolved a dispute among WUI, RCA and Comsat relating to the financing of the U.S. earth stations that operate with the INTELSAT system.[16] In that order, we also denied the requests of RCA and WUI that we reallocate ownership shares within ESOC, noting that while RCA and WUI had made whole their capital accounts, the immediate *Earth Station Ownership* proceeding was the appropriate vehicle by which to consider any new ownership scheme. On August 1, 1984, RCA filed a petition for immediate interim relief which requested the reallocation of ownership shares.[17] Second, in an item accompanying the NPRM, the Commission granted Comsat's application to provide INTELSAT Business Service, (IBS) space segment capacity to U.S. carriers to enable these carriers to establish for their customers dedicated international earth stations to carry all types of digital communications services.[18] Third, the Commission granted the applications filed by Comsat and a number of carriers to construct and operate IBS earth stations in the United States.[19]

11. Fourth, on January 13, 1984, the United States Court of Appeals for the D.C. Circuit vacated and remanded our August 19, 1982 Report and Order in the *Authorized User* proceeding[20] in which

[12] 47 U.S.C. 721(c).

[13] Comsat moved for leave to file a pleading titled "Proposal for Restructuring Earth Station Ownership and Operation Arrangements." Motion of Communications Satellite Corporation for Leave to File a Proposal for Restructuring Earth Station Ownership and Operations Arrangements June 23, 1983. The Commission granted the motion and reopened the docket for additional comments and replies by interested parties. Earth Station Ownership, Mimeo No. 5713 (released August 2, 1983).

[14] Under this proposal, ESOC joint owners would negotiate the dissolution of the consortium and a division of the earth stations' assets. Also, applications for INTELSAT Business Service (IBS) and certain small earth stations could be submitted to the Commission during the moratorium period.

[15] Memorandum Opinion and Order, In the Matter of Joint Request of Communications Satellite Corporation and RCA Global Communications, Inc., to Resolve Dispute Concerning the Manner by which Capital Contributions for International Earth Station Facilities may be Adjusted, Mimeo 1202 (released December 9, 1983).

[16] The Commission affirmed the Bureau's finding that an ESOC member cannot, in accord with Commission policy, unilaterally suspend its capital contributions and compel the remaining joint owners, including Comsat and AT&T, to absorb any resulting shortfall. We found that such withholding of funds is tantamount to a forced ownership realignment and is thus contrary to Commission orders which expressly require an ESOC member to petition the Commission for an adjustment of ownership shares. The Commission also denied the RCA request for stay pending court review. Memorandum Opinion and Order, Mimeo. 34410 (released April 9, 1984). On April 26, 1984, RCA filed a Petition for Review in the United States Court of Appeals for the District of Columbia of the Commission's April 9, 1984 order. Case No. 84-1162 (D.C. Cir.).

[17] The Commission released a Public Notice requesting comment on RCA's petition. I-S-P-84-006 (released August 17, 1984). In response to this notice, comments were filed by AT&T, WUI, RCA, ITT, and Hawaiian. Reply comments were filed by AT&T, WUI, and RCA, with RCA filing late. Today, in this proceeding, we grant RCA's motion for leave to file late reply comments. *See* para. 41, *infra*., for discussion of the ESOC capital contributions dispute.

[18] In the Matter of the Application of the Communications Satellite Corporation for Such Authority as may be Necessary for it to Participate in a Program to Provide Satellite Capacity for New Digital Business Services as part of the INTELSAT System, FCC 84-124, Mimeo. No. 34374 (released April 11, 1984).

[19] Communications Satellite Corporation, FCC 84-124, Mimeo No. 34374 (released April 11, 1984); International Relay, Inc., FCC 84-125, Mimeo No. 34388 (released April 11, 1984); Communications Satellite Corporation, FCC 84-126, Mimeo No. 34390 (released April 11, 1984); ITT World Communications, Inc., Mimeo No. 5197 (released July 6, 1984); TRT Telecommunications Corporation, Mimeo No. 5195 (released July 6, 1984); International Relay, Inc., Mimeo No. 5194 (released July 9, 1984); Satellite Gateway Communications, Inc., Mimeo No. 6305 (released August 31, 1984).

[20] ITT World Communications Inc. v. FCC, 725 F. 2d 732 (D.C. Cir., Jan. 13, 1984) ("*Authorized User II Opinion*"), *vacated and remanded* Proposed Modification of the Commission's Authorized User Policy concerning Access to the International Satellite Services of the Communications Satellite Corporation, 90 FCC 2d 1394 (1984) ("Authorized User II"), *revising* Authorized Entities and Users, 4 FCC 2d 421 (1961), *recon. in part* 6 FCC 2d 593 (1967) ("*Authorized User I*"). On March 27, the Court of Appeals denied our petition for rehearing.

we had decided to permit Comsat to offer end-to-end service to the public through a separate subsidiary and require Comsat to offer basic INTELSAT transmission capacity at U.S. general purpose earth stations to both carriers and non-carriers pursuant to a single tariff to be filed with the Commission. While upholding our legal position, the court found that we had abused our discretion by not considering, prior to implementing our *Authorized User II* policy, issues under examination in two inquiries then pending before the Commission, *Direct Access* [21] and *Earth Station Ownership*, which the court found to be directly related to the issues in *Authorized User II*. We subsequently released an NPRM in the *Earth Station Ownership* proceeding and a Report and Order in the *Direct Access* docket.[22] We then issued a Further Notice of Inquiry soliciting comment on the impact of our actions in the *Direct Access* order and *Earth Station Ownership* NPRM on our proposed *Authorized User II* policy.

D. Notice of Proposed Rulemaking

12. Upon review of the responses addressing the classification scheme proposed in the NOI, we found that the proffered classes did not adequately reflect the future earth station environment. We thus tentatively adopted a more practical classification scheme based on prevalent technology, *i.e.*, IBS, television, and multi-purpose earth stations. We also identified in the NPRM several legal, policy, technical, economic, and operational concerns that interested parties had for the most part addressed in their responsive pleadings to the NOI. We then proffered and discussed our tentative conclusions based upon a thorough review of both our earth station ownership policy and the comments submitted in response to the NOI. We stated in the NPRM that our overriding concern in 1966, the successful establishment of a global satellite system, may no longer, in 1984, justify a rigid policy under which Comsat is a fifty percent owner and sole operator of U.S. international earth stations. We noted that INTELSAT is now a financially and operationally sound organization with over 100 members and its own management staff and that recent innovations in satellite and earth station technology have made technically feasible greater carrier participation in earth station ownership and operation. We further stated our belief that a more open and flexible ownership/operation policy would increase intramodal competition (i.e., increased competition among providers of satellite services) thereby serving to encourage innovation, promote efficiency and create a downward pressure on rates. Finally, we noted that intermodal competition may also be increased by our proposed policy as satellite services are provided more efficiently.

13. We tentatively concluded in the NPRM that the adoption of a more open and flexible earth station ownership policy which relies on competitive forces is consistent with the Communications Act of 1934 and the Communications Satellite Act of 1962.[23] We tentatively concluded that individually owned and operated IBS and television earth stations are technically feasible, create few, if any, significant economic or efficiency problems, will not significantly affect our foreign partners in INTELSAT, and will result in lower cost and technically superior services to consumers. With regard to multi-purpose stations, we stated that many of these concerns would likely arise. We proposed that Comsat be required to file cost-based tariffs for INTELSAT space segment usage through its World Systems Division and file earth station tariffs through a separate subsidiary acting as an international service carrier.[24] In the NPRM, we recognized that AT&T occupies a unique position in the international arena because it is the major owner of cable facilities, the primary source of international traffic, and is by far the greatest user of international earth station and space segment capacity. We also recognized that diversion of its traffic from existing stations could adversely impact on the public interest. We therefore requested comments addressing this potentiality. We also tentatively concluded that a moratorium on accepting applications as proposed by Comsat was unwarranted.

14. We tentatively concluded that it would be in the public interest to accept applications for IBS and television earth stations from any carrier and to process these applications in a routine fashion.[25] We also tentatively concluded that applications for multi-purpose earth stations should be subject to a more rigorous review of economic, technical, and operational considerations.[26] While we discussed certain authorization criteria relevant for multi-purpose stations, we particularly requested comment on the possible relevancy of such other factors as traffic and revenue diversion among stations and AT&T's unique position in the international market. As to the future of ESOC, we

[21] Regulatory Policies Concerning Direct Access to INTELSAT Space Segment for the U.S. International Service Carriers, 90 FCC 2d 1446 (1982) (Notice of Inquiry).

[22] Subsequent to the issuance by the Court of Appeals of *Authorized User II Opinion*, we adopted a Report and Order in the *Direct Access* proceeding in which we concluded that none of the "direct access" proposals, *i.e.*, bases, capitalized leaseholds, indefeasible rights of use (IURs), or direct investment in INTELSAT, would serve the public interest. *In the Matter of Regulatory Policies Concerning Direct Access to INTELSAT Space Segment for the U.S. International Service Carriers*, 97 FCC 2d 296 (released April 25, 1984) at para. 3. We stated that as to those concerns upon which proponents of direct access based their support, we would consolidate into the *Comsat Structure* proceeding and the immediate *Earth Station Ownership* proceeding measures alternative to direct access which should enhance the position of the end-user as well as Comsat's carrier customers. We emphasized, however, that in terminating the *Direct Access* inquiry we were not foreclosing our reconsideration of direct access should our alternative measures prove ineffective. *Direct Access* at para. 3.

[23] The Commission's authority over international earth stations within the United States is found in Titles I, II, and III of the Communications Act of 1934, as amended, and Titles I, II, and III of the Communications Satellite Act of 1962, as amended. Section 201(c)(7) of the Communications Satellite Act, in particular, directs the Commission to "grant appropriate authorization for the construction and operation of each satellite terminal station, either to the corporation (Comsat) or to one or more authorized carriers or to the corporation (Comsat) and one or more of such carriers jointly, as will best serve the public interest, convenience, and necessity."

[24] With regard to the unbundling of tariffs, the Commission sought Comsat's comments on how it might proceed in this respect. Specifically, we requested that: (a) Comsat submit sample tariffs with accompanying explanation of the methodology employed; (b) identify and explain all expenses and costs wholly associated with space segment and earth segment services; and (c) identify and describe costs of all activities common to earth station, space segment, and other services, with costs to be apportioned reasonably among all services. We also proposed: (a) The separation of Comsat's competitive earth station activities from its monopoly space segment activities; (b) that all Cosmat applications for new stations or for additions to existing stations be made through a Comsat subsidiary, and; (c) that Comsat transfer any ownership interests in existing INTELSAT stations from WSD to a separate subsidiary and that such proposed transfer be submitted to the Commission for review.

[25] We proposed that applications for IBS and television earth stations would be granted upon a showing of minimal legal and financial qualifications of the applicant and technical qualifications of the proposal, as required by sections 308 and 319 of the Communications Act of 1934. In fact, due to strong public interest considerations, we granted applications to construct and operate IBS earth stations, conditioned on the outcome of this proceeding.

[26] We proposed to closely examine each application for an independently owned multi-purpose station to determine, on a case-by-case basis, whether its construction and operation would result in technical inefficiencies and/or economic harm to existing stations that might outweigh the public interest benefits otherwise accruing from the proposed station. We determined that with respect to IBS and television stations, space segment efficiency and traffic diversion from multi-purpose to IBS and television stations are not significant issues.

proposed to permit, in the first instance, the ESOC joint owners to negotiate among themselves the future of ESOC. We indicated that absent a unanimous agreement of the owners to retain, modify, or dissolve ESOC, any individual owner could submit a proposed plan to the Commission for our consideration.[27] Finally, we tentatively concluded that Comsat should continue to represent the United States at INTELSAT meetings with continued government monitoring of its role. We also favored greater carrier/public input into INTELSAT policy, tariff, and procurement decisions through the instructional process and sought additional comments on this issue.

E. Responsive Pleadings

15. In response to the NPRM all parties, to some extent, supported the development of a competitive international earth station market and its attentive lower costs of services and increased use and viability of the satellite system.[28] Most of the respondents favored the classification scheme proposed in the NPRM which separated earth stations into three classes based upon prevalent technology: Television, IBS and multi-purpose.[29] The scheme was to be employed when addressing technical and other issues raised by the parties as well as in proposing application evaluation criteria. A majority of the respondents favored the Commission's two-tiered application approach under which applications for television and IBS earth stations would be processed on a routine basis while applications for the construction of multi-purpose earth stations would be subject to a more rigorous review.[30] Some parties, principally AT&T, favored extending expedited processing to all types of earth stations.[31] As to the criteria that should govern the consideration of IBS and television applications,[32] there was general agreement that these earth station applications should be reviewed for the minimal legal and financial qualifications of the applicant and technical qualifications of the proposal. As to multi-purpose applications, some parties suggested use of the IBS/television standards. However, most parties, including NTIA and Comsat, agreed with our proposal to more rigorously review these applications.[33] Further, most parties addressing the issue of an applicant's dominant status stated that Commission review should take due account of an applicant's monopoly or dominant status [34] and the potential for diversion of traffic from existing ESOC earth stations. Comsat argued that AT&T, as provider of approximately 90 percent of all international satellite traffic and as major owner and operator of cable facilities, should be barred from owning and operating earth stations since such a scheme would necessarily result in the domination of both international cable and satellite facilities by AT&T. According to Comsat, there is no real competition in the international voice market and thus permitting AT&T to divert traffic to its own earth stations would not be a natural and benign consequence of marketplace forces.[35] RCA, for the same reasons proffered by Comsat, proposed a five-year moratorium on AT&T's ownership and operation of earth stations.[36]

16. With regard to the future of ESOC, the parties unanimously supported the Commission's proposal to permit negotiations by the ESOC joint owners to determine ESOC's future. Several parties submitted proposed frameworks for such negotiations.[37] The parties were

[27] We noted that the ultimate disposition of ESOC would not be allowed to disrupt service to users or to unduly delay or hinder the institution of independent carrier ownership of new earth stations. NPRM at para. 44.

[28] We note that Equatorial Communications Systems (Equatorial) initially filed comments in support of deregulation of international receive-only earth stations located in the United States in the Earth Station Ownership proceeding. Equatorial subsequently filed a petition for rulemaking requesting that we revise Part 25 of our Rules to permit U.S.-based receive-only satellite earth stations to receive signals from any INTELSAT satellite without being licensed or otherwise individually authorized by the Commission. *See* Petition for Rulemaking of Equatorial Communication Service, Rulemaking No. 4845 (released August 16, 1984). Equatorial requests that we resolve this issue in the immediate proceeding as parties have had opportunity for comment on its petition. We shall deny this request. We do not believe that the record is sufficiently complete for us to act on Equatorial's petition. Moreover, Equatorial's rulemaking petition has created a separate proceeding in which we may comprehensively examine its proposal.

[29] IRI, ITT and TRT stated that the Commission's classification plan could, in the future, become too restrictive on the scope of services to be offered by competitive facilities, i.e., the classifications may not adequately reflect INTELSAT's service practices in the near future, and might, as a result, foreclose the most efficient use of independent facilities. IRI further stated that the plan imposes an undue burden of requiring repeated applications for the purpose of incorporating new service techniques. IRI, comments at p. 17; TRT, comments at p. 3.

[30] ITT, the Networks, Equatorial, NTIA, HBO, Federal Express, and Comsat. Comsat would favor extending routine processing only to applications for earth stations which would provide *exclusively* IBS or television service.

[31] AT&T, IRI, RCA, TRT, and NTIA. RCA would favor extending routine processing to applications for multi-purpose earth stations by all carriers except for AT&T.

[32] AT&T argued that the Commission should not scrutinize applications for new multi-purpose earth stations in a manner dispatate from that employed for other classes of international earth stations in that technological advancements in earth stations and satellite technology, especially TDMA/DSI, makes efficiency concerns irrelevant. AT&T also claimed that the INTELSAT charging policy provides a satisfactory mechanism for compensating inefficiencies.

[33] While agreeing with the need for a more thorough evaluation of multi-purpose earth station applications, some parties stated that there were sufficient safeguards already in place via the INTELSAT Agreements, tariffs, and the marketplace, to ensure the continued overall efficiency in the near term of the INTELSAT system and to dispel any concern of premature saturation.

[34] Comsat, RCA, and ITT.

[35] AT&T argued that the Commission should disregard the impact of traffic diversion when considering applications for multi-purpose earth stations (1) since AT&T's own economic interest in ESOC will temper the massive sudden diversion of traffic from existing ESOC earth stations; (2) since what diversion may occur will be offset by traffic growth in the system (a view supported by IRI, MCII, ASC, NTIA and Federal Express); and (3) because AT&T is the major source of international satellite traffic, restrictions on its use of less costly and more efficient earth stations will be detrimental to a large number of customers, and thus, not be in the public interest. In its reply comments, AT&T stated that it is willing to become sole owner of certain mainland ESOC stations and is prepared to negotiate with the other owners for the purchase of those stations. Comsat, in its reply comments, argued that AT&T's assertion with regard to traffic diversion does not provide an appropriate basis for the promulgation of policy on this issue and that AT&T has relied on overstated traffic forecasts. Comsat also argued that AT&T's scheme would result in an AT&T-dominated system, that existing earth stations, built basically to accommodate AT&T's traffic, could not remain financially viable on the basis of the remaining (non-AT&T) traffic. Comsat also rejected NTIA's suggestions that the Commission disregard AT&T's investment in other telecommunications technologies when considering multi-purpose applications. Comsat averred that AT&T control of both cable and satellite facilities would hamper intermodal competition.

[36] AT&T argued that with any granting of authority to Comsat for the construction/operation of an earth station should be the concomitant requirement that Comsat offer INTELSAT capacity on a full and partial transponder basis, based on equivalent voice channels and to offer such capacity in its unbundled space segment tariff. AT&T, comments at page 16. Both RCA and Comsat rejected AT&T's proposal. In its reply comments, RCA stated that this proposal would in practical terms primarily benefit AT&T since AT&T is the only carrier with sufficient traffic volumes to take advantage of partial or full transponder capacity. RCA also claimed that granting this proposal would enable AT&T to extend its current MTS monopoly into the now competitive international leased channel market. Comsat averred in its reply comments that (1) the issue was not raised in the NPRM and, therefore, cannot be a proper subject for discussion and resolution in the forthcoming order, and (2) INTELSAT does not now offer such capacity for international services and is only considering such an offer for IBS. Comsat concluded that there is nothing in the record regarding the terms on which capacity might be available or the implications of such an offering.

[37] AT&T proposed that prior to the Commission's final order in this docket, the joint owners meet to

Continued

generally concerned with continuity of efficient, high quality service at reasonable rates, and equitable access [38] to the existing ESOC stations. There was also a consensus of opinion that the development and approval of an ESOC transition plan should not hinder or delay the progress of the Commission in considering and granting applications for independent earth stations. All respondents rejected Comsat's proposed "moratorium" on applications for construction of multi-purpose earth stations, claiming it would be anticompetitive.[39]

17. Several parties commented on the appropriate structural form for Comsat's participation in the competitive ownership and operation of earth stations, e.g., whether Comsat's current ownership share of general purpose earth stations should be transferred from the WSD to a separate subsidiary and whether Comsat's ownership of new earth stations should be in the WSD or separate subsidiary. Most parties endorsed our proposal that Comsat's competitive earth station activities be separated from its monopoly space segment activities to minimize cross-subsidization between the emerging competitive activity for earth station services and the monopoly provision of space segment services. AT&T and RCA proposed a transitional arrangement under which Comsat's ESOC earth station ownership could be retained in WSD until the dissolution of ESOC, while competitive (new) earth station investments would be through a separate subsidiary. Most parties also proposed that we closely scrutinize any investment transfers and tariff filings to ensure that cross-subsidization does not occur between earth station and space segment operations.[40] Comsat argued that the ownership and operations of its multi-purpose earth stations should be permitted to remain in WSD. However, Comsat did not object to placing the ownership and operation of IBS and television earth stations in a separate subsidiary providing non-monopoly service. With reference to the separate subsidiary proposal found in our *Authorized User II* proposal for end-to-end services, Comsat favored WSD being limited to providing multi-purpose earth station and space segment services and one separate subsidairy providing end-to-end and *IBS*/television earth station services. Comsat argued that an arms-length separation between management of earth station and space segment services would impede the coordination and efficiency currently obtained through a single entity.[41]

18. All parties with the exception of Comsat supported the Commission's proposal that should non-ESOC or Comsat entities be authorized to construct and operate international earth stations, Comsat should unbundle its tariffs so as to enable carriers to obtain space segment capacity separate from earth station capacity. In so doing, the parties have gone to great lengths to advise us of Comsat's tendency to exceed its allowable rate of return and that it has rarely resisted prior temptations to overburden users of its monopoly services in order to support its competitive ventures.

19. With regard to the issue of what the proper role of Comsat, as U.S. Signatory to INTELSAT, should be in any ownership arrangement, most parties stated that Comsat shoud continue to represent U.S. interests in INTELSAT but that the Commission should adopt mechanisms for greater carrier/operator and public participation in the formulation of U.S. positions in INTELSAT. A variety of mechanisms were proposed by the respondents which reflect varying degrees of carrier/operator and public involvement in both Comsat/INTELSAT forums and the instructional process. There was general agreement that there should be significantly greater access to INTELSAT documents and meetings and greater imput into INTELSAT planning and coordination functions. While Comsat favors greater carrier input,[42] it stated that the instructional process should not be altered pending the completion of an ongoing congressional inquiry and the efforts of an inter-agency task force.

II. Discussion

A. Overview

20. The Communications Satellite Act of 1962 charges the Commission with the responsibility of establishing an earth station ownership policy which best

identify and evaluate various proposals for dissolution of ESOC, including sale and exchange of ownership interests and joint ownership of some stations, and then prepare and submit to the Commission a proposal for its approval. AT&T also identified a series of specific items of concern. The owners would implement the plan subsequent to Commission approval, at which time the transition period, if needed, would begin. Comsat stated that negotiations should be authorized without imposing time constraints on meetings during the pendency of this proceeding. After the termination of the proceeding, Comsat stated that the Commission should require prompt reporting of the discussions' status and evaluate such progress. Should no agreement be made, the Commission should prescribe a solution. Both Comsat and AT&T noted that the owners met on May 29, 1984, in an effort to establish a framework for discussion and have agreed to report to the Commission on the progress of their discussions.

[38] Section 201(c)(2) of the Communications Satellite Act of 1962, 47 U.S.C. 721(c)(2) requires that the Commission:

"insure that all present and future authorized carriers shall have nondiscriminatory use of, and equitable access to, the communications satellite system and satellite terminal stations under just and reasonable charges, classifications, practices, regulations, and other terms and conditions and regulate the manner in which available facilities of the system and stations are allocated among such users thereof."

[39] Comsat initially urged a three-year transition period to allow the marketplace to adjust to the change in regulatory philosophy and stated that although the Notices and other parties labeled its proposal a "moratorium," Comsat merely contemplated a transition period for the processing of applications. Comsat, in its comments to the NPRM, stated that under a case-by-case analysis of applications for multi-purpose stations, the Commission could begin processing those applications at the termination of this proceeding. *See* fn. 70, *infra*.

[40] The parties generally agreed that a rigorous investigation of Comsat's space segment rates should be made and that Comsat's sample tariff failed to provide adequate assurances that (1) Comsat's allocation of costs for its monopoly services are accurate and reasonable and do not reflect cross-subsidization; (2) the cost allocation between the ground and space segments is accurate and reasonable; and (3) the rates are fairly derived from valid demand projections, are reasonable for each use of its different services, and reasonably reflect services justifiably chargeable to Comsat's monopoly ratepayers. ITT also submitted a lengthy set of questions for Commission investigation. ITT reply comments at page 20. (*See* comments of ITT, RCA, Hinchman, AT&T, IRI, MCII.) MCII called for the immediate unbundling of rates even though an earth station policy has not yet been formulated. With regard to the manner by which to arrive at a lawful tariff, MCII and WUI stated that the Commission should refrain from rate-averaging, at least prior to any rate filings by carriers. WUI suggested that the Communications Satellite Act restricts the Commission from prescribing rate-averaging prior to a rate filing while Hawaiian argued that the Act does not restrict the prescription of rate averaging prior to rate filings, and that the Commission should maintain a policy of rate averaging for existing general purpose earth stations in order to assure continued viable rates and services to lower traffic areas, such as the Pacific Ocean region. IRI favored using the INTELSAT Utilization Charge (IUC) as a benchmark from which to derive a lawful tariff claiming that the IUC represents Comsat's revenue requirement, in a per circuit basis, for its INTELSAT investment expenses and associated costs.

[41] While recognizing that in some instances competitive activities should be carried out in a separate subsidiary so that the WSD's competitive ventures do not profit at the expense of ratepayers, Comsat claimed that a separate subsidiary requirement is expensive, necessitating a duplication of functions and impeding the overall efficiency of the international statellite system, and that traditional regulatory oversight would obviate the need for such separation. Comsat further stated that a separate subsidiary might be warranted with respect to WSD's ownership of IBS and television earth stations in that intense competition will result from the probable deregulation in the near future. Finally, NTIA stated that a separate subsidiary requirement was unnecessary in that stricter accounting procedures would suffice to ensure that cross-subsidization does not occur.

[42] Comsat has developed a program to increase public access to information regarding INTELSAT and its activities as well as Comsat's actions as U.S. Signatory, discussed at para. 48, *infra*.

serves the public interest.[43] The joint ownership arrangement that we established in 1966, and which was implemented by the carriers in 1967, addressed the needs of a nascent satellite telecommunications industry. We found that a joint ownership scheme would expedite the "establishment of an effective and efficient global satellite communications system" and assist the "orderly development of a comprehensive complex of earth stations."[44] We envisioned the involvement of carriers other than Comsat in international earth station management and ownership and sought to allow these carriers the opportunity to obtain experience in satellite communications and to provide them incentives to maximize their use of satellite technology.[45] We have however, always recognized the dynamic nature of the satellite and earth station technologies. We have witnessed the development of larger, more reliable and efficient satellites, smaller earth stations and new services. We have also witnessed the transformation of INTELSAT from an organization with few members managed by Comsat to a financially stable entity with its own management staff and over one hundred members.[46] In such a new environment we believe that a review of our existing earth station ownership policy is timely.

21. We conclude here that a liberalized earth station ownership policy which permits the construction and operation of earth stations outside of ESOC would benefit users by increasing carrier and service options and creating competitive pressures on rates. We also conclude here that such a policy is consistent with our INTELSAT obligations and can generally be implemented without adverse impact on service quality or efficiency. In effectuation this policy, we will allow competition consistent with our statutory objectives for existing and new earth stations, and will consider applications from any carrier. We will accept applications to provide IBS and television services and process such applications in a routine fashion. We will employ a more rigorous review, on a case-by-case basis, of applications for multi-purpose stations. We shall reallocate ESOC ownership shares in proportion to the joint owners' current usage of the ESOC facilities and then permit the ESOC joint owners to nogotiate among themselves the future of ESOC. WE shall require that Comsat file cost-based tariffs for INTELSAT space segment usage through its World Systems Division and file earth station tariffs through a subsidiary acting as an international service carrier. We further mandate: (a) That Comsat separate its competitive common carrier earth station activities from its monopoly common carrier space segment activities; (b) that all Comsat applications for new stations or for modifications to authorized stations be made through a Comsat subsidiary; and (c) that Comsat transfer any ownership interests in existing INTELSAT stations from the WSD to a separate subsidiary and that the mechanics of such proposed transfer be submitted to the Commission for review. While we are cognizant of the need for a smooth transition from one ownership arrangement to another, we shall not impose a moratorium period on any application for the ownership and operation of earth stations. We will also not impose any pre-filing restrictions on AT&T although we recognize that AT&T applications for multi-purpose earth stations may raise unique issues. We conclude that Comsat should continue to represent the United States at INTELSAT meetings with our continued monitoring of its role. Further, we find that it is appropriate to facilitate greater carrier, operator, and public input into the instructional process and INTELSAT decisions. Finally, we conclude that owners of international earth stations may attend the annual meetings of the Operational Representatives that address operating and coordinating matters that relate to space segment and earth stations.

B. Legal Considerations

22. Titles II and III of the Communications Act of 1934, as amended, and Titles I, II, and III of the Communications Satellite Act of 1962, as amended, grant to the Commission authority over international earth stations within the United States. Section 201(c)(7) of the Communications Satellite Act directs the Commission to "grant appropriate authorization for the construction and operation of each international satellite terminal station, either to the corporation (Comsat) or to one or more authorized carriers or to the corporation (Comsat) and one more such carriers jointly, as will best serve the public interest, convenience, and necessity." These statutory options and the statutory history make it clear that Congress expressed no preference for which ownership arrangement we should permit when it enacted this section and that the Commission was given the discretion to determine the ownership scheme which would best serve the public interest. Inherent in this grant of authority are the twin responsibilities of: (a) Using our expertise and discretion to establish an initial earth station ownership policy which served the public interest; and (b) modifying that policy as warranted by changes in the facts and circumstances underlying the original formation of the policy.[47]

C. Policy Considerations

23. A more flexible ownership scheme which permits independent earth station ownership outside of ESOC as market forces dictate and the public interest requires would foster innovation, establish more service and carrier alternatives for users, and create a downward pressure on earth station costs and rates. Thus, we would encourage the development of a market where earth stations could be owned with Commission approval by ESOC, by individual carriers, by Comsat or by any Comsat/carrier combination. We believe that Comsat's filing of a cost-based, unbundled tariff coupled with the opportunity for carriers to construct their own earth stations at locations of their choosing will foster the establishment of efficient networks and result in substantial savings for users. While we are aware of the need for both a smooth transition and the consideration of public interest factors when reviewing specific applications, the record in this proceeding demonstrates that new forms of ownership for all types of earth stations which access the INTELSAT system will serve the public interest.

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[43] 47 U.S.C. 721(c)(7) provides that the Commission shall: "Grant appropriate authorization for the construction and operation of each satellite terminal station, either to the Corporation (Comsat) and one or more authorized carriers or to the Corporation and one or more such carriers jointly, as will best serve the public interest, convenience, and necessity."

[44] *Second Report and Order*, 5 FCC 2d at 817.

[45] *Second Report and Orders*, 5 FCC 2d at 816, 818–820.

[46] INTELSAT has grown from 19 member countries in 1964 to 109 members in 1984, and the net investment in its space segments has grown from $69 million in 1967 to $1.5 billion in 1984.

[47] As we have already noted in the NPRM, these changes would include advances in earth station technology, the feasibility of competition in the provision of earth station services and facilities, the impact of a new policy within INTELSAT, the quality and price of service to users, the development of intramodal and intermodal competition in the international marketplace, foreign policy and national security considerations, and interference, compatibility and connectivity requirements.

24. Our experience has been that the introduction of competition in the provision of international services, or a segment of an international service, produces real benefits for users. In the last several years we have permitted the international record carriers to provide international service from all points in the United States (*Gateways*);[48] we have removed restrictions on AT&T's provision of international record services (*TAT–4 Revisited*);[49] and we have authorized new entrants for the provision of international record and voice services (Western Union, Graphnet, MCII, SBS, GTE Sprint, etc.). We have taken steps to assure that competitive activities will not be subsidized by monopoly offerings (*Comsat Structure*) [50] and information useful to competitive entities in the United States will be quickly and fairly disseminated (*Information Flow*).[51]

25. The central policy issue addressed by the respondents was whether earth station capacity can and should be provided by any entity other than ESOC. Comsat has maintained throughout this proceeding that the unrestricted independent ownership of U.S. international multi-purpose earth stations could hamper the efficient, reliable and cost-effective operation of the U.S. earth station network and adversely affect the optimum utilization of the INTELSAT space segment. However, Comsat has stated that other carriers' applications could be considered following a transition period and be granted if they satisfy a strict public interest standard. Other respondents contended that a more liberal ownership and operational plan for new and existing stations would better address the needs of international satellite users without compromising the efficiency of the INTELSAT global system. After a careful review of our earth station ownership policy and the responsive filings in this proceeding, with particular attention to questions relating to earth station and space segment efficiency, we conclude that a restrictive ownership policy is no longer warranted, that substantial benefits to users will flow from a more open and flexible earth station ownership policy, and that this new policy can be implemented in such a way as to ensure earth station and space segment efficiency. We more fully explain the technical considerations on which this policy conclusion is made in the following section.

D. Technical Considerations

26. For the purpose of addressing technical issues and formulating application review criteria, we adopted in the NPRM a classification scheme which divided earth stations into three classes: Multi-purpose, IBS, and television stations. While most respondents supported the use of these categories, some parties argued that the proposed classifications were too restrictive, constrained competition, and were inconsistent with prevailing procompetitive international service policies. We believe that these three classes of service are sufficiently broad to include both existing and future services. As will be emphasized in the section dealing with application criteria, our basic policy thrust is that if an earth station application for the provision of a particular service or services does not raise significant legal, policy, economic, technical or other issues, we would expect the staff to routinely process that application, just as it has done with the recently filed IBS and television earth station applications. On the other hand, if significant issues are raised, then a more rigorous review would be appropriate.

27. The principal technical issue raised by the parties was whether a policy encouraging competition in the provision of U.S. earth station services would have a significant adverse impact on the overall efficiency of the INTELSAT system. Comsat argued that the system's efficiency would decline as the number of earth station antennas accessing a particular satellite increased. Comsat contended that the unrestricted addition of U.S. multi-purpose earth station would cause fragmentation of major traffic streams which in turn would require a greater number of circuits to transmit the same volume of traffic. Comsat also argued that satellite capacity and design life could be adversely affected by a proliferation of small (Standard B) earth stations that require more powerful satellites or drain more power from existing satellites. Other parties, including AT&T, IRI, and RCA, averred that technological advancements in earth station and satellite technologies, such as TDMA/DSI,[52] make efficiency concerns irrelevant and that the INTELSAT charging policy already provides a satisfactory mechanism for compensating inefficiencies.[53]

28. We conclude that with respect to television and IBS earth station applications the issue of technical inefficiency is generally irrelevant.[54] However, such inefficiency concerns are real and must be examined when considering applications for multi-purpose earth stations which have in the past utilized mostly Standard A and Standard C antennas. We believe, however, that some increase in the number of new multi-purpose U.S. earth stations operating under today's access arrangements will not necessarily result in a noticeable change in achievable satellite efficiency from that obtainable under our current ownership policy. Nevertheless, efficiency factors such as the type of modulation and multiple access used, the frequency band, the particular satellite and transponder accessed, the type of communications, and the size of the antennas are relevant to our public interest finding and will be examined on a case-by-case basis when

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[48] 76 FCC 2d 115 (1980), *aff'd sub nom. Western Union Telegraph Company* v. *FCC*, 655 F. 2d 1126 (D.C. Cir. 1981).

[49] 92 FCC 2d 641 (1982).

[50] 90 FCC 2d 1159 (1982) and 97 FCC 2d 145 (released April 30, 1984).

[51] Id.

[52] TDMA and DSI are acronyms for time division multiple access equipment and digital speech interpolation equipment, respectively. Use of TDMA, rather than frequency division multiple access (FDMA), increases the number of circuits a given satellite transponder can carry by approximately 50–60 percent. DSI equipment operates in a fashion similar to circuit multiplication equipment used on cables and approximately doubles the number of circuits used for message telephone services.

[53] As we stated in the NPRM, the inefficient use of the space segment can arise from a number of sources. Certain modulation formats for multi-purpose earth stations work more efficiently with one or two earth stations accessing a transponder than with multiple earth station access that one might expect in a competitive environment. Further, a competitive environment may tend to encourange the use of earth stations smaller than Standard A or Standard C stations for multi-purpose service which, in some situations, do not achieve the satellite efficiencies that could be achieved with the larger stations. INTELSAT does discourage overly wide use of small stations for voice-grade service by exacting a space segment surcharge for circuits transmitted from or received by these stations. The degree of inefficiency that might be generated by new earth stations in a competitive environment would depend upon such factors as the type of modulation and multiple access used (*i.e.*, FDMA vs. TDMA), the frequency band (*i.e.*, 6/4 GHz vs. 14/11 GHz), the ocean region, the particular satellite (*i.e.*, Major Path or Primary), the particular transponder with its connectivity requirements (*i.e.*, few vs. many contries), the type of communication (*i.e.*, analog vs. digital), and the size of the antennas on both the U.S. and foreign ends (*i.e.*, Standard A, Standard B, Standard C, or others).

[54] With regard to IBS earth stations, INTELSAT anticipates a multi-earth station service and has already evaluated considerations of satellite efficiency. It has arrived at space segment prices that compensate it for the full cost of space segment associated with each type of IBS earth station. As to television service earth stations, the number of television channels which can be derived from a transponder is generally independent of the number or size of earth stations accessing the transponder. Ordinarily, two earth stations can access the same transponder, thus, the operational nature of this service does not pose a significant inefficiency issue.

considering applications to construct and operate multi-purpose earth stations.

29. We find that advancements in both satellite and earth station technology, such as the further development of multiplexing equipment like TDMA, will enhance the efficiency of multi-purpose earth stations and the INTELSAT system. Such advancements will be considered in reviewing applications. We also believe that there exist additional safeguards within the INTELSAT organization and processes to help assure continued efficiency of the INTELSAT system.[55] We emphasize that our jurisdiction over this matter will continue and that we have the ability to re-examine how technical factors will be evaluated in the application process.

30. A second technical issue relates to technical coordination of new earth stations with the INTELSAT system and its Signatories. At the present time, technical coordination is a five-step process. First, an earth station application is filed and its construction and use is authorized. Second, the technical characteristics and specifications are presented to INTELSAT by Comsat, the U.S. Signatory. Third, the earth station is built and is tested. Fourth, INTELSAT reviews the test results and, if the results are satisfactory, approves the use of the earth station with the INTELSAT system. Finally, the earth station is coordinated (frequencies, antennas and transponders) with other Signatories. We do not envision any significant modification of this procedure. We would expect each owner/operator to work with Comsat to transmit test results to INTELSAT and to coordinate frequencies, antennas and transponder data with other owners. While the integration of earth station and reference station [56] operations and technical coordination of U.S. earth stations into the INTELSAT system does not pose technical problems, there might arise questions as to operational coordination, planning, and owners' responsibilities. The issue of operational coordination is discussed at para. 39, *infra*.

31. We note that Comsat has recently published and distributed its "Digital Express User's Guide" which describes the process for activation and operation of Digital Express (IBS) earth stations and includes references to information on technical performance standards. It appears that this publication will assist the integration of IBS earth stations into the INTELSAT system. The publication states that Comsat provides guidance and assistance on activation and operation of such stations and such follow-on services as operational planning, provision of space segment capacity, and maintenance of network integrity in collaboration with correspondent administrations.

E. Economic Considerations

32. The economic issues addressed by the respondents concern the costs and benefits of independent ownership both to the participants in the INTELSAT system (both Signatories and international carriers) and to users of the INTELSAT system. Of central concern were the additional costs for foreign administrations (PTTs) and revenue diversion. As to additional costs for the PTTs, Comsat has argued that the PTTs will be adversely affected by our more flexible earth station ownership policy since foreign earth stations would require additional equipment to operate with new U.S. stations.[57] Notwithstanding this claim, we note that the expenditure of additional funds and the interconnection with new entrants are decisions to be made by the PTTs. Thus, for the operation of any new U.S. earth station, a willing foreign partner must exist. Foreign administrations, in order to increase their revenues, may show a greater willingness to enter into operating agreements with U.S. carriers which provide new services, have distinct customer bases and own their own earth stations. Further, new entrants and increased competition in the United States should increase demand for all INTELSAT services and thus increase revenues for both INTELSAT and its members.[58]

33. The major economic consideration is the potential for traffic and revenue diversion from existing ESOC earth stations to new earth stations.[59] Because of the size of carrier investments and the nature of the operations of the ESOC joint owners, we anticipate that the issue of revenue diversion would most likely arise under the following scenario: ESOC continues and AT&T files an application to construct and operate a new multi-purpose earth station with the intention of diverting its traffic from an ESOC facility to its new earth station. The issue presented would be whether revenue diversion would harm Comsat to the extent that earth station or space segment services to the public would be, on balance, adversely affected. If the ESOC co-owners successfully reach a settlement on the future of ESOC, we would anticipate that some arrangements would be included to minimize any economic injury, mooting the issue. However, because of the clear potential for significant revenue diversions that such earth stations may present, we will defer to the application process the question of whether a particular earth station and anticipated traffic diversion would impact Comsat so that overall service to the public would be adversely affected.

34. Comsat contended that some international carriers, AT&T in particular, are apt to divert a substantial amount of traffic from existing ESOC stations to new stations, resulting in significantly reduced revenues and higher rates for the remaining carriers

[55] We note that INTELSAT can discourage overally wide use of small earth stations or other inefficient modes of operation by exacting space segment charges for circuits transmitted from or received by these stations. Further, earth station must meet INTELSAT's technical performance standards prior to accessing the INTELSAT satellite. *See* INTELSAT Operating Agreement, Art. 14(a); Procedures Governing Application, Approval, Verification, and Operation of Earth Stations in the INTELSAT System, INTELSAT Doc. BG–35–82 (Rev. 2) (March 18, 1981).

[56] A "reference station" is a TDMA earth station within a network of TDMA earth stations that acts as a standard, or reference, for the timing of all of the stations' transmissions.

[57] Comsat claimed that an increase in costs to the PTTs would result from their need to procure additional equipment to operate with new U.S. earth stations, thus creating an economic disincentive for these PTTs to enter into operating agreements with U.S. earth station operators.

[58] Comsat also argued that the use of a greater number of circuits to carry the same amount of traffic would accelerate satellite saturation schedules and accelerate the purchase by INTELSAT of additional space segment (satellite) capacity. This additional capacity would be partially (24%) funded by Comsat and would increase Comsat's space segment rate base, revenue requirement and charges. In response to this argument we must state that we doubt additional space segment capacity beyond that already planned by INTELSAT will have to be procured as a result of our new ownership policy. First, IBS is priced in a manner which anticipates inefficient use of the space segment. Second, television service does not create inefficiencies. Third, it is probable that the INTELSAT system will have excess capacity at least for the next several years. Fourth, even if additional space segment would have to be procured, we can not simply conclude that this added cost outweighs other savings to users brought about by our new policy. In fact, we are quite confident that any increase in space segment investment and charges will be offset by reductions in earth station rates and terrestrial hauls. Finally, INTELSAT could adopt a charging policy to generate additional funds necessary for supplemental satellite procurements.

[59] The NPRM solicited comments addressing the issues of: (a) What weight should be accorded potential traffic and revenue diversion when considering authorization applications; (b) whether to treat such diversion as a natural and benign consequence of the market mechanism; and (c) whether to balance the interests of the current providers of earth station capacity with the interests of consumers likely to benefit from more efficient entrants.

and users of these stations.[60] In response AT&T stated that: (a) Its ownership interest in existing earth stations and the dedicated connecting terrestrial facilities will temper massive diversion of traffic from existing ESOC stations; (b) any diversion that may occur will be offset by traffic growth in the system; and (c) restrictions on AT&T's use of less costly and more efficient earth stations will be harmful to a large number of customers. Many potential owners of new earth stations stated that any traffic diversion would generally be offset by increases in international satellite traffic. These parties averred that existing procedures for application approval, economic self-interest and a negotiated transition for ESOC would provide a sufficient safeguard to ensure traffic diversion does not adversely affect users.[61]

35. As we stated in the NPRM,[62] the IRCs and AT&T are the ESOC members which originate and terminate traffic. They provide end-to-end service to users in contrast to Comsat which, at present, serves these carriers as a carrier's carrier. The IRCs collectively generate approximately 10 percent of the international satellite traffic. They jointly own approximately the same percent of the existing ESOC stations. Since satellite traffic handled by U.S. earth stations is estimated by INTELSAT to grow in the next several years at an annual rate of approximately 16 percent,[63] we conclude that any diversion of traffic by one or more IRCs (or new entrants such as IRI) to new stations is likely to be offset by overall market growth, thus avoiding economic harm to AT&T, Comsat, other ESOC members or the public. For the same reasons we can also conclude that construction and operation by a Comsat subsidiary of a new earth station will not injure the IRCs, AT&T or the public. Furthermore, overall demand for satellite services is likely to increase as new services develop, new entrants enter the market, terrestrial hauls are shortened and intramodal competition develops.

36. We recognize, however, that if ESOC continued in its present form and if AT&T were to divert a substantial percentage of its traffic to a new facility, then Comsat would suffer a revenue loss and the joint owners, the IRCs and AT&T would suffer a rental payment decrease on their ESOC investments.[64] Yet, if AT&T's current costs of obtaining earth station capacity exceed its total costs under an arrangement where it builds and operates one or more earth station facilities, then independent or non-ESOC ownership of earth stations by AT&T could lead to a more efficient service offering and lower rates to its users. We are cognizant that traffic diversion may result from a policy of independent ownership of international earth stations and the competitive provision of international earth station services. We are also aware that Comsat will suffer a loss of traffic should it engage in overpricing of services.

37. We intend to evaluate specific contentions of revenue diversion in the application process when a particular set of facts are before us. We shall primarily look at the effect of diversion on service to the public rather than the effect on the petitioning carrier. Thus, unless it can be demonstrated that traffic diversion will significantly impact a carrier's ability to provide service to the public and that the public will, on balance, be adversely affected by this occurrence, we do not intend to limit or bar AT&T's (or any other carrier's) entry into the earth station market. The Supreme Court set the standard governing additional competitive entry into a given market by mandating that we determine whether competition is reasonably feasible in those markets sought to be served and that additional competition serves the public interest.[65] The Court stated that the Commission, in determining whether additional competition is in the public interest, "is not required to make specific findings of tangible benefit . . . but must at least warrant . . . that competition would serve some beneficial purpose."[66] The commission, in *Mackay Radio and Telegraph Co.*, 28 FCC 231 (1960) (*Mackay*), stated that the feasibility of competition depends upon whether there is sufficient traffic to support the additional competition and upon the effect of the additional competition upon the applicant as well as all other carriers providing service to the public. In *telocator Network of America* v. *FCC*, 691 F. 2d 525 (D.C. Cir. 1982) *(Telocator)* the circuit court reiterated the standard for additional competitive entry:

> [T]he Commission may lawfully allow, and indeed encourage, entry of multiple carriers offering overlapping services, if it has reviewed the characteristics of the particular communications field involved and rationally concludes that competition in that field predictably would further the public interest in larger, more economical, and more effective service. Essentially, the Commission must be able reasonably to forecast, first, that new entry will not so severely impair the economic base of existing carriers that the industry would experience an incidence of failure so high as to impair provision of service to the public and, second, the injection of new providers will probably result in better, cheaper, or more innovative communications offerings. These forecasts must have some ascertainable foundation in the record; at the same time, however, conclusions on the future conduct of licensees, the anticipated reaction of investors, the expected course of technological development, and other assumptions about the functioning of tomorrow's communications market are unavoidably exercises in prediction. For such prognoses, we can require only that the agency's decisional memoranda reveal that it identified all relevant issues, gave them thoughtful consideration duly attentive to comments received, and formulated a judgment which rationally accommodates the facts capable of ascertainment and the policies slated for effectuation (footnotes omitted).[67]

The District of Columbia Circuit Court also employed the *RCAC* standard in approving authorization to construct earth station for Hawaii—U.S. service.[68] The reasoning in this line of cases clearly indicates that the *RCAC* standard is applicable to the

[60] We again note that AT&T is the source of approximately 90 percent of international telecommunications traffic, is the largest owner of underseas cable, and owns the connecting terrestrial lines that link U.S. international earth stations and cables to major population centers.

[61] Most respondents argued that the Commission should at least consider revenue and traffic diversion on a case-by-case basis when determining whether to authorize new earth stations. Application criteria are discussed in greater detail within the context of the future market structure at para. 49, *infra*. Our discussion of the determination of the public interest follows at para. 37, *infra*.

[62] At para. 41.

[63] The forecasted annual global growth rate (percent) for INTELSAT traffic is estimated to grow approximately 14 percent. These figures are taken from the "INTELSAT Traffic Data Base Resulting From the 1984 Global Traffic Meeting," released by INTELSAT on August 13, 1984.

[64] Because the IRCs' ownership share in ESOC is realatively small, we can conclude that any rental payment loss suffered by the IRCs due to independent ownership and operation of a multi-purpose earth station by AT&T will not be substantial, will represent only a small percentage of their total revenues, and will not adversely affect their operations or the type, quality or price of services offered to the public.

[65] *FCC v. RCA Communications, Inc.*, 346 U.S. 86 (1953) (*RCAC*).

[66] *RCAC*, 346 U.S. at 96–97.

[67] *Telocator*, at 544. *See also in the Matter of Overseas Communications Services*, 92 FCC 2d 641 (1982) (*TAT–4*).

[68] *Hawaiian Telephone Co.* v. *FCC*, 589 F. 2d 647 (D.C. Cir., 1978). The Commission has employed the *RCAC* standard in approving SBS international service [*In the Matter of Satellite Business System*, 91 FCC 2d 940 (1982)]; the dirct provision of television service by Comsat [*In the Matter of Spanish International Network*, 70 FCC 2d 2127 (1978)]; and in setting aside both the TAT–4 policy which limited AT&T's international service offerings and any other policy which limited the IRC's offerings [*In the Matter of Overseas Communications Service*, 92 FCC 2d 641 (1982)].

determination of additional competitive entry into the international earth station services market.

38. On the issue of revenue diversion, we do not believe that the public would be adversely affected if Comsat no longer was the sole provider of earth station services. As to the provision of earth station services generally, other entities appear eager to construct and operate a variety of earth stations. The provision of earth station services by carriers with customer bases eliminates a middleman and may be the most efficient way to provide service. Further, regardless of the ownership and operation arrangement of international earth stations, all present and future authorized carriers are insured "nondiscriminatory use of, and equitable access to, the communications satellite system and satellite terminal stations. . ." pursuant to section 201(c)(2) of the Communications Satellite Act of 1962, as amended. 47 U.S.C. 721(c)(2). As to the provision of space segment services, we do not believe that the independent ownership of multi-purpose earth stations by AT&T will adversely affect Comsat's ability to provide space segment capacity. We first note that AT&T's large investment in ESOC, which we increase today, may temper, any AT&T plan for the major diversion of traffic from an ESOC facility to a wholly owned AT&T facility. We also note the growth in demand for international satellite services and the development of new services. Finally, the placement of Comsat's earth station investment in a separate subsidiary will insulate its earth station offerings from its jurisdictional space segment services which we anticipate would remain a profitable line of business.

39. Another area of concern is the integration of the operations of U.S. earth stations into the INTELSAT system and the obligation of the United States to install new earth station equipment as scheduled by INTELSAT. We do not regard the issue of integration as technical since there is no technical barrier to the ability of earth station owners to coordinate frequencies, antennas, and transponders data with the INTELSAT members. Integration does, however, pose the problem of who should bear the costs of operational coordination (*i.e.*, the costs of additional equipment or reference stations). For instance, as we noted in the NPRM,[69] an issue may arise when INTELSAT, with input from the United States, decides that certain traffic from certain countries should be handled by special modulation formats, such as TDMA. As an operational policy, INTELSAT does not decide which earth stations in a given country should change their formats to meet these requirements. It allows the country to make this decision. With competitive stations, disagreements among the owners may arise regarding who should incur the extra investment. We proposed in the NPRM to permit the station owners to resolve integration matters through negotiations. Subsequently, and only if necessary, would we resolve the matter through our retained jurisdiction and conditioned authorizations. We here affirm that tentative conclusion. Thus, earth station owners will, in the first instance, have the opportunity to resolve integration issues themselves. However, in recognition of the importance of these issues, we shall retain jurisdiction over U.S. earth stations and condition earth station authorizations, as necessary, to remedy any integration problem.

[69] At para. 38.

F. The Future of ESOC and Other Issues

40. *ESOC:* One of the central issues raised by the transition to a new competitive earth station ownership policy is the appropriate disposition of the ESOC earth station investments. We noted in the NPRM that the owners may opt to retain ESOC, to dissolve ESOC or to establish a "hybrid" ownership arrangement. We reached no tentative conclusion as to which arrangement would be most efficient or best serve the public interest. All respondents addressing this issue supported our proposal of permitting the joint owners to negotiate among themselves the future of ESOC and then submit an agreement to the Commission for our consideration.[70] We continue to believe that comprehensive negotiations among the joint owners are appropriate and we therefore affirm our tentative conclusion to permit negotiations. The more difficult question is what course of action would best serve the public interest if an agreement is not reached. We indicated in the NPRM that after a negotiating period of several months we would consider individual proposals on the disposition of the earth stations. We proposed such a filing to emphasize to the carriers the importance we attach to resolving this issue and to convey to them a sense of urgency. Since the carriers have already initiated discussions it is clear that they share our concern and sense of urgency. Therefore, we need not establish an artificial deadline for the negotiations. We do, however, request the owners to file periodic reports on the state of negotiations as they have done over the past several months. If these reports indicate that the negotiations have broken down, we will solicit proposals for our consideration. We expect, of course, that any arrangement would be consistent with the antitrust laws and assure the continuance of efficient, high quality service without any disruption at reasonable rates and with equitable access to all earth stations.

[70] We note that the joint owners have in fact initiated discussions subsequent to the release of the NPRM. From the pleadings, we can discern that some progress has been made in negotiating the disposition of ESOC. *See* fn. 39, *supra.*

41. *ESOC Dispute:* In resolving this limited dispute, we required RCA and WUI to make whole their ESOC capital contribution accounts prior to requesting that we act on their requests to reallocate ownership shares.[71] Having satisfied that condition precedent, RCA and WUI requested, both in this proceeding and a separate Common Carrier Bureau proceeding,[72] that we reallocate ownership shares in ESOC to more accurately reflect the current usage of ESOC facilities by the joint owners. In their filings in this docket WUI and RCA indicated their belief that a reallocation of ownership shares would facilitate the ESOC negotiations.[73]

[71] *See* para. 10 and fn. 16, *supra.*

[72] RCA Request for Immediate Interim Relief, I-S-P-84-006 (released August 17, 1984). *See* fn. 17, *supra.*

[73] Hawaiian stated that it had no objection to RCA's requested reallocation as long as it did not delay the current ESOC negotiations or prejudge the Commission's policy with regard to the eventual dissolution or rearrangement of ESOC. ITT, which took no position with regard to the ESOC capital contribution dispute between RCA and Comsat, opposed RCA's proposal concerning reallocation of ownership shares in the Paumalu, Hawaii earth station. ITT objected to RCA's proposal that both RCA and ITT receive approximately the same ownership share even though RCA has three times the usage at this earth station. AT&T opposed RCA's request for reallocation, stating that: (a) RCA's request is, in effect, a late filed petition for reconsideration of the Commission's earlier *ESOC Dispute* order; (b) the Commission had already ruled on RCA's reallocation request and RCA thus waived its right for appellate review of the ruling; (c) reallocation would violate the fundamental basis for the establishment of ESOC as a voluntary organization; (d) reallocation is now imprudent in light of the current negotiations to end the present ESOC joint ownership scheme; and (e) RCA's claim that it is overinvesting in ESOC facilities is weak since RCA receives through rental payments paid by AT&T and other non-ESOC carriers a return on the capital which it invests in ESOC. Further, AT&T argued that RCA's investment in ESOC is included in its rate base on which it earns its authorized rate of return.

We shall today grant this request in this proceeding for three reasons.[74] First, our 1966 policy decision and subsequent orders establish that we have asserted jurisdiction over the existing ownership arrangement and the ownership shares. The ESOC Agreement specifically acknowledges our power to reallocate shares by conditioning the ownership of the existing and additional earth stations "subject to the further order of the Commission."[75] Second, we have always recognized the dynamic nature of the satellite telecommunications industry and state in our *Second Report and Order* that the quotas prescribed by us are "subject to revision in the light of experience gained and will be expressly subject to reexamination and possible readjustment on the basis of data submitted to the Commission."[76] Reallocation is also consistent with our earlier ESOC orders, that the allocation of ownership shares "is one under which ownership is reasonably related to use."[77] All parties to ESOC agree as to the disparity between the ownership shares initially assigned by the Commission in 1966 based on carrier projections and the joint owners' current usage. Third, because the continued existence of ESOC, on one form or another, is a possible outcome of the joint owners' discussions, we believe it equitable to act on these reallocation requests. We note, however, that this reallocation is not intended to suggest our preference as to the future ownership and operation arrangement. We further note that the ESOC negotiations are broad discussions relating to the future operations of ESOC as well as the disposition of ESOC investment shares. While this reallocation of shares may impact the broad negotiations, we do not believe that the effect will be significant or create any major stumbling blocks.

42. The ownership shares which we now adopt on the basis of actual use of the international earth stations are set out below under the "use" column:

Station and carrier	Existing ownership share (percent)	Reallocated ownership share (percent) based on current usage [78]
Contiguous United States:		
Comsat	50.0	50.0
RCA	10.5	1.4
WUI	4.0	1.1
AT&T	35.5	47.5
Hawaii:		
Comsat	50.0	50.0
RCA	11.0	4.85
WUI	3.0	1.9
ITT	6.0	4.35
Hawaiian	30.0	38.9
Guam:		
Comsat	50.0	50.0
RCA	42.0	48.9
WUI	8.0	1.1

[78] Traffic shares are the number of circuits projected to be in use divided by 2, to reflect usage in terms of ownership shares. We note that in authorizing the construction by ESOC of a third east coast earth station we required the ESOC members to enter into ownership svtotiations with all eligible international service carriers. In this case, TRT Telecommunications Corporation (TRT) had indicated a desire to acquire an ownership interest in ESOC that was reasonably related to its use of the international earth station facilities. *Comsat*, 90 FCC 2d 68 (1982), at 86. TRT ultimately decided not to become an ESOC member.

Usage ratios are as of June 30, 1984. *See* letter from Allen E. Flower, ESOC Financial Representative, Comsat, to Robert E. Conn, MCII, dated August 30, 1984. The figures are from the ESOC Financial Statements, August, 1984.

Because there is no disagreement among the joint owners as to their respective current usage of each of the ESOC facilities, we will require that all operating licenses held by Comsat on behalf of all ESOC members, or by all ESOC members jointly, for each of the respective international earth stations be amended to reflect the above-stated new ownership interests.

43. *Unbundling:* The unbundling by Comsat of space segment and earth station charges is a necessary and logical requirement to make competition feasible in the provision of earth station facilities. Because the WSD continues to be the sole provider of INTELSAT space segment, Comsat would have both the incentive and ability to favor use of its own earth stations if bundled rates were permitte.[79] Comsat could accomplish this by lowering costs which it allocates to space segment for its own offerings and bundling space segment and its own earth station services into one rate element. If this were done, we would have great difficulty in assessing whether these changes were reasonable and whether lengthy investigations could be required. We shall therefore require that Comsat unbundle the earth station and space segment components of the rate elements for all of its offerings presently contained in Tariff No. 6, 14 and 101 and refile separate cost-based rates.[80] On a related matter, we reject AT&T's proposal that we require Comsat to request at this time the availability of full and partial transponder capacity from INTELSAT based on equivalent voice channels requirement and to offer such capacity in its unbundled space segment tariff.[81] We agree with Comsat and ITT that this issue is beyond the scope contemplated by the NPRM and that there is an insufficient record on which to base such a decision.

44. In response to our request in the NPRM, Comsat submitted sample tariffs and an explanation of the methodology employed to derive such rates. Most respondents found the submission unacceptable and called upon the Commission to both investigate or arrange an independent audit of space segment costs and direct Comsat to file fully supported tariff proposals. The parties argued that Comsat failed to clearly identify and describe the costs of all activities and failed to verify that: (a) Its total costs for its INTELSATE services are accurate and reasonable and do not reflect cross-subsidization; (b) its allocation of costs between space and ground segments is accurate and reasonable; and (c) its rates are fairly derived from valid demand projections, are just and reasonable for each of its different services and reasonably reflect "used and useful" endeavors justifiably chargeable to Comsat's monopoly ratepayers.[82] The purpose of receiving a sample tariff from Comsat was to permit interested parties and the Commission staff the opportunity to preview an unbundled tariff and to give Comsat a preliminary opportunity to receive feedback on such a filing. The attention paid to the sample filing indicates that it served this purpose well. However, as merely a sample tariff, it cannot be the subject of any conclusions here. When

[74] As we stated in our Capital Contributions Dispute order, Mimeo. No. 34410, *supra*., petitions for reallocation of ESOC ownership shares would be considered in the *Earth Station Ownership* proceeding. MO&O, *supra*. para. 9. We have incorporated the responsive pleadings in File No. I-S-P-84-006 into the Earth Station Ownership docket and have decided the reallocation issue in the immediate proceeding on the basis of the public record developed in both proceedings.

[75] Earth Station Ownership Agreement, March 23, 1967, at para. 1.2.

[76] *Second Report and Order*, 5 FCC 2d at 819.

[77] *Second Report and Order*, 5 FCC 2d at 817.

[79] In most instances, Comsat presently operates as a carrier's carrier in that it is the sole provider of earth station and space segment service utilized by other international carriers in the provision of their end-to-end services. As to television offerings, Comsat can furnish its service directly to end-users.

[80] Comsat provides its services under five separate tariffs: Tariff No. 6—voice grade service for NASA between Comsat earth stations and ship mobile terminals; Tariff No. 14—high speed digital service for Advanced Research Project Agency between the Etam earth station and overseas locations; Tariff No. 16—television service between customer-provided earth stations in the U.S. and Mexico; Tariff No. 101—a general offering of voice grade, television, audio, high speed data, digital data, point-to-alternate point, and international business satellite services; and Tariff No. 102—maritime services. The rates in Tariff Nos. 6, 14 and 101 contain bundled rate elements for each service based on the costs of the INTELSAT space segment and earth stations. Tariff No. 102 includes maritime services which contain bundled rate elements for each service based on the costs of the INMARSAT space segment and earth stations. Tariff No. 16 covers only space segment costs.

[81] AT&T comments at page 16.

[82] *See* Reply Comments of ITT, pp. 3–12, RCA, Hinchman, and AT&T.

filing its tariff, we would expect Comsat to take into account the suggestions and concerns raised by the parties in the comments.

45. *Moratorium:* Comsat argued in its "wholesale/retail" combination earth station proposal that the Commission should adopt a three-year moratorium on applications for the construction of multi-purpose earth stations in order to allow the marketplace to adjust to the new ownership policy.[83] Under a deluge of responses unanimously attacking the moratorium as unwarranted and anticompetitive, Comsat restated its position as favoring a modest transition period only, that under a case-by-case analysis of multi-purpose stations, the Commission could begin processing those applications at the termination of this proceeding. We conclude that a lengthy moratorium period is unwarranted and not in the public interest. We do not believe a formal transition period for multi-purpose earth station applications is necessary as there is a built-in delay period in the application process as well as in the INTELSAT coordination and earth station construction processes. Moreover, we do not expect to receive many applications for multi-purpose earth stations while the ESOC disposition negotiations are in progress. In addition, all parties to this proceeding have been on notice since the issuance of the NOI and NPRM that we were seriously contemplating the immediate acceptance and processing of multi-purpose earth station applications upon the release of this order. It cannot be said, therefore, that any party is unfairly surprised. We shall thus begin processing such applications.[84]

46. *INTELSAT Representation:* With regard to the issue of INTELSAT representation, most respondents agreed that Comsat should continue to represent U.S. interests in INTELSAT but that we should adopt mechanisms for greater public participation in the formulation of U.S. positions in INTELSAT. This issue concerns U.S. input into INTELSAT policy, tariff and procurement decisions as distinct from the issues of earth station integration or technical coordination of U.S. earth stations with the INTELSAT system. Pursuant to the INTELSAT Agreements, Comsat is currently the U.S. Signatory to INTELSAT and represents the United States at INTELSAT meetings. Comsat's actions within INTELSAT are subject to our instructional process by which NTIA, the Department of State and the Commission develop U.S. positions on various issues. Under a competitive policy, different earth stations would be owned by different entities; these earth stations, however, would continue to be considered by INTELSAT as U.S. operated earth stations. Most parties proposed various mechanisms by which to increase carrier, operator and public participation in INTELSAT meetings and to guarantee greater carrier and public input into the instructional process. Concern was also expressed that investing carriers and interested parties should have timely access to INTELSAT documents in order to formulate and present meaningful comment to the Commission in its instructional function.

47. Comsat, the U.S. Signatory to INTELSAT under the INTELSAT Agreement, is the only U.S. entity responsible for investing in space segment. We believe that Comsat, through the instructional process, will continue to adequately represent U.S. interests. Notwithstanding this conclusion, we believe that greater carrier input on certain issues into the instructional process would be highly beneficial. The government agencies responsible for monitoring Comsat's representational role at INTELSAT meetings and issuing instructions to the Signatory (NTIA, the Department of State and the Commission) have instituted an informational procedure by which to provide the public with an opportunity to comment on issues to be addressed in INTELSAT meetings in order to broaden the base of information prior to the issuance of government instructions to Comsat. Consistent with the Commission's directives and criteria concerning the public dissemination of INTELSAT-related documents and information established in the *Comsat Structure* proceeding,[85] the Commission now makes most INTELSAT documents received by Comsat available for public inspection and comment. The comments are reviewed and considered to the extent that time allows and may, if deemed appropriate, be incorporated into specific instructions. If this procedure proves workable, it will be continued for future INTELSAT meetings. If not, we will employ whatever means may be necessary to find a workable procedure. Further, any owner/operator of an international earth station will be able to attend the annual meetings of Operational Representatives that address operating and coordinating matters that relate to the space segment and earth stations as integral parts of the global communications satellite system.[86] These meetings have traditionally been open to all earth station owners, whether they are Signatories or not. Comsat shall work with owners/operators of international earth stations to arrange for their participation in OR meetings.

48. We take special note that Comsat has taken a number of steps to increase the public availability of information regarding INTELSAT and its activities as well as Comsat's actions as U.S. Signatory. At the first of an ongoing series of public meetings, held on August 2, 1984, Comsat presented a detailed overview of INTELSAT's structure and activities including its procurement process, the mechanics of its meetings, Comsat's document distribution program, and the government instructional process.[87] Comsat also presented a review of issues currently before the INTELSAT Board of Governors.[88] Comsat also stated its intention to make available the agendas and documents for INTELSAT meetings in advance of those meetings in order to enable carriers and others to review and comment on the material before the meetings. Comsat's second public meeting on October 10, 1984, was designed to acquaint individuals with the INTELSAT operational planning process and with Comsat's role in this process. The meeting included a review of procedures instituted in the United States by

[83] Under this proposal, the first part of this period would involve negotiations necessary for the dissolution of ESOC and the establishment of the combination earth stations operations. The second part would be a baseline period during which Comsat would develop and offer a range of services to carriers only. Comsat proposed that the Commission completely forebear from accepting applications for multi-purpose and television earth stations at this time.

[84] As we have noted earlier, IBS earth station applications have already been granted conditioned on this Report and Order. *See* fn. 19, *supra.*

[85] *Changes in the Corporate Structure and Operations of the Communications Satellite Corporation,* 90 FCC 2d 1159 (1982) (*First Structure Order*), *recon. denied,* 93 FCC 2d 701 (1983), *Comsat,* 97 FCC 2d 145 (released April 20, 1984) (*Second Structure Order*). *See also* letter dated March 30, 1984, from the Chief, Common Carrier Bureau, to Lawrence M. DeVore, Vice President and General Counsel, World Systems Division, Comsat, regarding Comsat's implementation of the Commission's directives in its *Comsat Structure* order on the public availability of information, technical data and patented inventions generated by or on behalf of the INTELSAT and INMARSAT organizations.

[86] *See* Operations Representatives Organization and Coordination Procedures, BC–29–62E, October 3, 1977.

[87] While Comsat has indicated in its letter to Chairman Fowler, August 9, 1984, that similar overview briefings will not be necessary on a regular basis, it has offered to hold them for any interested individuals or groups.

[88] Comsat stated its intention to hold such forums for review and discussion on a quarterly basis, in synchrony with the schedule of Board of Governors' meetings, and to place taped records of these review meetings in the public document room.

Comsat to insure that all U.S. operational requirements are identified, planned for, and satisfied in a timely and coordinated fashion, and the continuity and quality of U.S. services using INTELSAT is maintained. Comsat also conducted two public working group meetings on October 11, 1984, one of which was designed for U.S. International Service Carriers and U.S. international earth station operators on the preparation for the October 24, 1984 INTELSAT Operations Representatives' Conference. The other working group meeting was designed for operators and potential operators of U.S. Digital Express (IBS) earth stations to review and discuss planning, implementation, operation, and coordination matters affecting earth stations for INTELSAT IBS services. Finally, Comsat has established an office of the World Systems Division Vice-President, International Operations, to handle in a timely and equitable manner, public inquiries related to INTELSAT issues.[89]

49. *Application Criteria:* We conclude with respect to application criteria that all relevant public interest factors shall continue to be considered under Parts 25 and 63 of the Commission's Rules in deciding whether to authorize the construction and operation of new earth stations and determining the future operation of existing stations.[90] We are aware, however, that the pertinent factors can differ with respect to different classes of earth stations. As to applications for IBS stations, the issues of system efficiency and revenue diversion are not critical for our consideration. IBS is a flexible, totally digital integated service designed to accommodate a full range of user applications including private facsimile, data and teleconferencing. INTELSAT has planned the space segment capacity for IBS, unlike its standard capacity, to enable a single transponder to accommodate access by a large number of earth stations. The IBS capacity is further designed to accommodate user networks through a variety of connectivity arrangements. Since the multiple access concept is an integral part of the IBS concept, we need not consider the efficiency effect of multiple IBS earth stations on established INTELSAT services.[91] As to applications for television earth stations, we again do not consider the issues of inefficiency or revenue diversion to be critical for review. Like IBS, television service is a specialized offering distinct from INTELSAT's general offering of space segment capacity. This service is a minor source of revenues for INTELSAT (4 percent) and is provided by a small number of specific satellite transponders which can be accessed by only a limited number (ordinarily two) earth stations per transponder at a given time. Since no greater number of earth stations would access technically a particular transponder even under a more liberal ownership policy, and since revenue diversion would be an insubstantial part of Comsat's current revenues, we shall not consider these factors in our application authorization analysis. We shall therefore process the applications for both IBS and television service stations on a routine basis with consideration limited to legal (citizenship and character), financial (ability to meet the costs of construction and operation), and technical (station location, desired frequencies and types of equipment to be used, hours and mode of operation, etc.) qualifications of the applicant as required by sections 308 and 319 of the Communications Act. Absent special problems, the Commission shall treat these applications as routine and will seek to expeditiously process them. Upon grant, the applicant shall be issued a combined Radio Station Construction Permit and License (FCC Form 456–P). While we shall limit the use of the facilities authorized for the provision of IBS or television services to these services, carriers may seek additional authorization if they desire to use these facilities as multi-purpose earth stations.

50. We shall continue to closely scrutinize applications for multi-purpose earth stations as they raise more complex economic, technical and operational issues and may affect the variety, quality and price of services offered to users. In determining whether the public interest would be served by a grant of a particular application, we shall analyze the impact of a grant on the provision of earth station and space segment services. We shall proceed with this analysis of how a proposed facility would affect service to the public by balancing the possible benefits (*e.g.*, shorter terrestrial hauls, increased user options, lower charges to users, and increased customer base for INTELSAT services) against the possible detriments (reduced technical efficiency, harmful revenue diversion, service deterioration and higher changes to users) which a particular application may present. Because we have adopted a case-by-case approach, a moratorium or permanent bar on the ability of AT&T or any other entity to own and operate its own international earth stations is unwarranted.

51. With regard to applications for all classes of earth stations, we shall monitor frequency coordination and engage in procedures to implement the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347, as may be necessary. Applicants shall file FCC Forms 401 (Application for New or Modified Common Carrier Radio Station Construction Permit) and 430 (Common Carrier and Satellite Licensee Qualification Report) in addition to a section 214 application under § 63.01 of the Commission's Rules. Upon acceptance for filing, the applications shall be placed on 30 days public notice pursuant to section 309 of the Act and § 63.52 of the Rules. Further, section 201(c)(2) of the Communications Satellite Act requires authorized carriers to have nondiscriminatory use of and equitable access to the communications satellite system and satellite earth stations owned by other carriers.

52. *Structure:* As to the appropriate organizational form for Comsat's participation in the competitive ownership and operation of earth stations, we conclude that all of Comsat's earth station activities must be provided through a common carrier entity separate from the parent World Systems Division. We reject Comsat's agrument that earth station ownership must be within the World Systems Division rather than within a competitive subsidiary in that as a matter of law, the parent is the "corporation" as referenced in section 201(c)(7) of the Communications Satellite Act.[92] We believe that the term

[89] Comsat has proposed that it will continue to provide carriers with the plans which INTELSAT proposes for consideration by the meetings of Operations Representatives, and continue to hold briefings before and after these meetings to discuss both the proposed and agreed upon plans with the carriers. We have concluded that any independent earth station owner may attend such meetings. However, the participants in the OR meetings may, at their discretion, continue to hold briefings among themselves before and after the OR meetings to discuss any of the technical issues arising from the meetings.

[90] *See* para. 37, *supra*, for our discussion on the determination of the public interest in the 214 application process.

[91] We reject Comsat's proposal for a structured framework to be instituted by which the Commission could restrict the number of IBS stations in a particular market or geographic area that could otherwise inhibit efficient use of IBS capacity to serve all areas of the United States. We believe that U.S. use of IBS capacity should be determined by the actual need for IBS service as demonstrated by applications that we may receive and not by some predetermined plan.

[92] Section 201(c)(7) of the Communications Satellite Act directs the Commission to grant appropriate authorization for the construction and operation of earth stations to the corporation (Comsat), to authorized carrier(s), or to both jointly.

"corporation" includes the subsidiaries of Comsat. This view is consistent with our determination in the *Comsat Study*, the *First Comsat Structure* order and the *Second Comsat Structure* order that most activities other than the provision of INTELSAT space segment capacity should be performed outside of the World Systems Division.[93] We reject Comsat's arguments that: (a) There would be overriding cost problems resulting from this structural separation; (b) traditional regulatory oversight would obviate the need for separation; (c) structural separation would sacrifice efficiency resulting from Comsat's management of both earth stations and space segment services; and (d) if *Authorized User II* policy is reinstated, Comsat would have to form two separate subsidiaries, one for the provision of end-to-end services and the other for basic transmission service.[94]

53. As we emphasized in our *Comsat Structure* decisions, the structural separation of Comsat's jurisdictional activities from its nonjurisdictional activities will minimize cross-subsidization between competitive and monopoly services. It will also insulate Comsat's monopoly rate base, provide for separate accounting treatment for the monopoly services, assure arms-length dealings between the competitive subsidiary and the WSD, and help prevent improper transfers of information. Comsat has not filed with us data that would refute our finding of the need for a separate common carrier subsidiary. We also reject the transitional proposal raised by AT&T and RCA which would permit Comsat to retain its interest in multi-purpose earth stations in the WSD until ESOC's future is determined. This approach would be reasonable if ESOC were to be dissolved shortly. However, that is not necessarily the case: The owners may decide to continue ESOC. Thus, we find moving all of Comsat's earth station investment from the WSD to a separate subsidiary to be the prudent solution.[95]

54. We therefore conclude that all Comsat applications for new stations or for modifications to authorized stations be made through a Comsat common carrier subsidiary. Comsat shall also transfer any ownership interests in authorized INTELSAT stations from its World Systems Division, which provides monopoly space services, to a separate common carrier subsidiary, which will provide competitive earth segment services. Applications shall include a description of all functions to be transferred to the subsidiary as well as a description of all functions to be retained by the World Systems Division. An application for such a transfer shall be submitted to the Commission for review prior to implementation.

III. Summary of Conclusions

55. *Flexibility in Authorization for New Earth Stations.* We conclude that the adoption of a more liberal earth station ownership policy which depends upon marketplace forces is consistent with the Communications Act of 1934 and the Communications Satellite Act of 1962. We find that carrier owned and operated earth stations are technically feasible, create no major economic hurdles, will not greatly affect our foreign partners in INTELSAT, and will result in lower cost and technically superior service to consumers. We also find that a smooth transition to this environment can be achieved without jeopardizing service to users or carrier investments. We thus permit any international carrier or group of carriers to apply for authority to construct and operate such stations, whether IBS, television, or multi-purpose types. To facilitate this policy, Comsat shall be required to file unbundled, cost-based tariffs for INTELSAT space segment and earth segment usage. Consistent with our *Comsat Structure* orders, Comsat shall file space segment tariffs through its World Systems Division and earth station tariffs through a subsidiary acting as a common carrier. Finally, we conclude that a moratorium on accepting applications is not in the public interest.

56. *Authorization Criteria for New Earth Stations.* We conclude that relevant technical, economic and operational considerations shall be addressed in our determination of whether to authorize a particular multi-purpose application. Pursuant to the *RCA, Mackay, Telocator,* and *Hawaiian* line of cases, we shall evaluate on a case-by-case basis whether, among other things, a particular proposal will serve the public interest. We shall balance the benefits of reduced distance to users, access to new satellites, lower charges to users, and increased customer base for INTELSAT services against the detriments of reduced technical efficiency and revenue diversion. We shall particularly look at the overall impact on the provision of earth station services and space segment capacity. Applications for IBS and television (video) earth stations shall be processed in a streamlined, routine fashion, with consideration limited to legal (citizenship and character), financial (ability to meet the costs of construction and operation), and technical (station location, desired frequencies and types of equipment to be used, hours and mode of operation, etc.) qualifications of the applicant as required by sections 308 and 319 of the Communications Act.

57. *Flexibility in Determining the Future of ESOC.* We conclude that equity and the public interest demands that we reallocate ownership shares in ESOC to accord with the joint owners' current usage of ESOC facilities. Subsequent to the release of this order, the joint owners of the existing international earth stations shall have the opportunity to negotiate a resolution of the future of ESOC. Any arrangement unanimously agreed upon by the joint owners shall be subject to Commission review.

IV. Ordering Clauses

58. This Order is Issued to adopt and promulgate our new policy with regard to the ownership and operation of U.S. international earth stations that operate with the INTELSAT global communications satellite system.

59. It is ordered that pursuant to our authority under sections 4 (i) and (j) and 205 of the Communications Act of 1934 and sections 201(c) (7), (9), and (11) of the Communications Satellite Act of 1962, and § 1.423 of the Commission's Rules this order is issued.

60. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is certified, that sections 603 and 604 of the Act do not apply because this rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603, 604, 605(b). We do not anticipate that a substantial number of carriers will enter the earth station market. Further, we do not believe that very many of these entrants will be small entities.

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[93] *See Comsat Study*, 77 FCC 2d 564 (1980) *Comsat*, 90 FCC 2d 1159 (1982) (*First Structure Order*) and *Comsat*, 97 FCC 2d 145 (released April 20, 1984). (*Second Structure Order*).

[94] While recognizing that in some instances competitive activities should be carried out in a separate subsidiary so that the corporation's competitive ventures do not profit at the expense of ratepayers, Comsat claimed that a separate subsidiary requirement is expensive, necessitating a duplication of functions and impeding the overall efficiency of the organization.

[95] We find here only that implementation of our *Earth Station Ownership* policy requires that Comsat place its investment in earth stations into a separate subsidiary. In *Authorized User II*, we are considering whether Comsat should also be allowed to offer end-to-end (retail) telecommunications services and, if so, whether it should be required to offer such services through a separate subsidiary. We have not yet resolved either question. We shall therefore include Comsat's arguments on the disadvantages of multiple subsidiaries in our *Authorized User II* policy.

61. It is ordered, that the Secretary shall cause a copy of this order to be published in the **Federal Register** and shall mail a copy of this order to the Chief for Advocacy of the Small Business Administration.

62. It is ordered, that the ESOC joint owner's ownership shares in ESOC facilities shall be reallocated based on current usage figures. All operating licenses held by Comsat on behalf of all ESOC members, or by all ESOC members jointly, for each of the international earth stations shall be amended by January 18, 1985 to reflect the new ownership interests set forth below:

Station and carrier	New (reallocated) ownership shares (percent)
Mainland:	
Comsat	50.0
RCA	1.4
WUI	1.1
AT&T	47.5
Hawaii:	
Comsat	50.0
RCA	4.85
WUI	1.9
ITT	4.35
Hawaiian	38.9
Guam:	
Comsat	50.0
RCA	48.9
WUI	1.1

63. It is ordered, that to effectuate the separation by Comsat of its earth station activities from its space segment activities, Comsat shall transfer from the parent World Systems Division to a subsidiary all ownership interests in authorized international earth stations operating with the INTELSAT global satellite system.

64. It is ordered, that on or before January 18, 1985, the Comsat subsidiary referred to in paragraph 63 shall file an application under Section 214 of the Communications Act for certification as a common carrier to provide earth station services via the INTELSAT global satellite system.[96]

65. It is ordered, that on or before January 18, 1985, the Comsat World Systems Division shall file an application: (a) To modify its authorizations under section 214 of the Act to provide for the transfer of earth station activities to the separate common carrier subsidiary referred to in paragraph 63; and (b) to transfer to the separate subsidiary all Title III radio licenses issued to the World Systems Division on its own behalf or on behalf of the Earth Station Ownership Committee for the operation of satellite earth stations in connection with services of the INTELSAT global satellite system.

66. It is ordered, that Comsat shall file, in accordance with our rules, cost-based tariffs for INTELSAT space segment through the parent World Systems Division and file earth station tariffs through a separate subsidiary acting as a common carrier on February 1, 1985, to become effective on 45 days notice after filing of tariffs.

67. It is ordered, that Comsat shall file through a separate common carrier subsidiary all applications for new international earth stations or for modifications to authorized international earth stations.

68. It is ordered, that the request of Equatorial Communications Systems for Commission revision, in this proceeding, of Part 25 of our Rules to permit U.S.-based receive-only satellite earth stations to receive signals from any INTELSAT satellite without being licensed is denied.

69. It is ordered, that the motion of RCA Global Communications, Inc. for leave to file late reply comments to a Public Notice released in File No. I–S–P–84–006 (RCA Request for Immediate Interim Relief) is granted.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84–33473 Filed 12–24–84; 8:45 am]

BILLING CODE 6712-01-M

[96] We note that these filing procedures may necessitate our granting Comsat special temporary authority, pending final action on the required applications.

47 CFR Parts 73 and 78

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast station regulations in 47 CFR Parts 73 and 78 of the FCC rules. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule tests, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

EFFECTIVE DATE: Effective on December 26, 1984.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau, (202) 632–5414.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Radio broadcasting, Television broadcasting

47 CFR Part 78

Cable television relay service.

Order

In the matter of oversight of the radio and TV broadcast rules.

Adopted: December 13, 1984.
Released: December 20, 1984.

By the Chief, Mass Media Bureau.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) Section 73.61, AM directional antenna field measurements, was adopted in the Fourth Report and Order in Docket 20817, the Radio Operator Licensing Program, 46 FR 35450, July 8, 1981. That proceeding eliminated the testing and licensing program for First Class Radiotelephone operators.

In the Report and Order, the Commission recognized that there were a ". . . number of AM stations, using directional antenna systems, that are not required to make certain antenna field strength measurements or annual proofs of performance because they employ as duty operators only persons holding the First Class license." The text of the Order continues, "As there will no longer be any First Class operator requirements, some modification of this rule must be considered. "Until such a rulemaking procedure is concluded, however, those stations will continue to be exempt from the measurement requirements."

The exemption to the requirements for measurements was stated in Note 2 to§ 73.61. This Note 2 has prompted many queries from licensees and engineering consultants asking for clarification. In this Order, the Note is rewritten for purposes of clarity; and also several inaccuracies in the rule will be corrected, as follows:

—Paragraph (b) states that antenna proof measurements must be made and analyzed pursuant to procedures given in § 73.154 (Directional antenna partial and skeleton proof of performance filed strength measurements). Missing is the reference to an equally important procedural regulation, § 73.186. Establishment of effective field at one mile. It is added to the rule herein; and

—Paragraph (b)(2) cross references itself. It is corrected to state in the closing sentence of (b)(2) ". . . . as required by paragraph (b)(1) of this section"; and

—Paragraph (a)(1) is redesignated paragraph (c). Its stated requirements to have correctly functioning . . . . equipment" for the required measurement procedures pertains to paragraph (b) as well as (a) and is therefore redesignated the final paragraph (c), in the rule section. (See appendix item 1.)

(b) Quite a few inquiries have been received by the staff regarding interpretation of the amendments to §§ 73.68 and 73.69 which were revised in the Report and Order in BC Docket 82–537,[1] regarding elimination of operating and maintenance logs.

In § 73.68, Sampling systems for antenna monitors, paragraph (d) formerly provided that in the event the antenna monitoring sampling system became temporarily inoperative, a station could operate for up to "60 days without further authority from the FCC" if certain technical operational determinations were made (i.e., base currents, their ratios and deviations from station authorization values) and if field strength measurements were made at least once every 7 days. These measurements and observations, of course, formerly had to be entered in the maintenance log.

In revising the rule to eliminate the maintenance logging requirement, the frequency of determining base currents, et al, was unintentionally overlooked. The decision to reduce the frequency of observation from "once each day" to "as often as necessary to insure proper directional antenna system operation" was, unfortunately, lost in the drafting of the revised rule. Further, the requirements to take field strength measurements weekly during this out-of-service period of the sampling system, was inadvertently dropped. These time-frequency elements, mistakenly dropped from our rule as revised, have directly caused the large numbers of questions from our licensees and their technical advisors regarding the matter. The rule is herein revised and corrected to restate the required frequency of determination of base currents and their ratios and the making of field strength measurements on a weekly schedule. (See appendix item 2.)

(c) In addition to § 73.68's aberrations as described in paragraph (b) above, we also find shortcomings in § 73.69, Antenna monitors, as revised in the Report and Order in BC Docket 82–537.[2] In this rule, in paragraph (b), we find that stations whose antenna monitors become defective may be operated without them for up to 60 days without further FCC authority, pending their repair or replacement. As in § 73.68, there are certain requirements to which licensees must adhere: base currents and their ratios must be determined. But here again (as in § 73.68) the revised rule is silent regarding frequency of these determinations; and the taking of field strength measurements, weekly, has heedlessly been omitted in the final rule text. Again, we take the direction that relaxes the former rule and simply state that base currents and their ratios, and deviations of those ratios from the values in the station authorization will be determined "as often as necessary to ensure proper directional antenna system operation." Further, we herein reenter the mistakenly eliminated requirement to take field strength measurements at each monitoring point once each calendar week during the period the monitor is inoperative. (See appendix item 3.)

(d) FM allotments and assignments must be separated from other allotments and assignments on the same channel and five adjacent channels by certain minimum distances. The minimum distance separation requirements are found in § 73.207. Paragraph (b)(2)(ii) of this rule states "Under the Canada-United States FM Agreement, a short spacing of up to 8 kilometers (5 miles) in the direction of a related station may be considered acceptable depending on the circumstances of each individual case." This text is derived from the old Working Arrangement of the Canada-United States FM Broadcasting Agreement of 1947 (paragraph f thereto). In the new Working Arrangement between the two countries, dated September 7, 1984, this 5 mile short spacing consideration was eliminated. It is therefore removed from § 73.207 since it is no longer applicable. Also, Table B, "Minimum Distance Separation Requirements," is revised to show the new agreements reached in the new Working Arrangement. (See Appendix item 4.)

(e) Section 73.675 Operation during emergency was absorbed into a Subpart H (Part 73) rule applicable to all services, AM, FM and TV, in the Order adopted by the Commission September 22, 1978. 69 FCC 2d 979. The new rule was numbered and titled § 73.1250 Broadcasting emergency information. Failure to change cross references in the EBS rules in Subpart G, Part 73 leaves the old TV section number (§ 73.675 which has been deleted) in §§ 73.933 and 73.936 instead of the correct cross reference to § 73.1250. Correction is made herein. (See appendix items 7 and 8.)

(f) Section 73.681 sets forth the definitions for the FCC's TV technical standards. The definition of effective radiated power states, in part, that "the licensed effective radiated power is based on the average antenna power gain for each direction in the horizontal plane." However, this value is not specifically requested on the application form, is not determined in most applications and is not used by the Video Services Division engineering staff in their study of applications. The effective radiated power (ERP) in the horizontal plane was previously used to determine coverage contour distances, but in 1970 the Commission adopted the current method of using the ERP at the appropriate depression angle to the radio horizon to determine contour distances. 22 FCC 2d 354. Since then the ERP in the horizontal plane has not been used. The use of "average" (or RMS) power has been virtually non existant. The staff is concerned primarily with the *maximum* power/height limitations set by the rules. Therefore, the definition of *Effective Radiated Power* in § 73.681 is modified to so state. (See appendix item 5.)

(g) Paragraph (b) of § 73.688, Indicating instruments, is devoted entirely to a cross reference to § 73.689. The requirements of § 73.689 Operating power were, in past Commission actions, dispersed into three other rule sections, which focus on the three elements formerly contained in the rule, and the section was deleted. The elements are determining operating power, now in § 73.663; and operating power tolerance and reduced power operation, which are not in § 73.1560. Paragraph (b) of § 73.688, serving no purpose whatever, is removed herein. In past proceedings, § 73.688 has also been revised by removing paragraph (c) and paragraphs (e)(1) and (2) and marking them [Reserved]. With the removal of paragraph (b) herein, along with the prior removal of paragraph (c), we will redesignate paragraphs (d) and (e) as (b) and (c); and redesignate paragraphs (e)(3) and (4) as (c)(1) and (2). (See Appendix item 6.)

(h) The Report and Order in General Docket No. 83–322 modified (or eliminated) certain rules pertaining to licensed radio operators. 49 FR 20658, May 16, 1984. One of the rules amended is § 73.1860, Transmitter duty operators.

[1] 48 FR 38473, August 24, 1983.

[2] Id.

The Order deleted reference to operator "permit" in the opening sentence of paragraph (a) which formerly read, "Each AM, FM and TV broadcast station must have at least one person holding a commercial radio operator license 'or permit'. . . ." The term "permit" was dropped because it is synonymous with license and deemed redundant. However, many of our broadcast licensees interpret its removal to mean the elimination of a type of operator's license—the "permit"—assuming it deletes the Restricted Radiotelephone Operator *Permit*. It does not. But since the change in the rule is causing confusion, particularly in light of use of the term "permit" in the designation of the Restricted Radiotelephone Operator Permit, we will return it to the text of paragraph (a) for clarity. (See Appendix item 9.)

(i) Another modification, much like the one in paragraph (h) above, is made herein to remove potential confusion: paragraph (a) of § 73.1870, Chief operators, fails to reference "permit" when it describes ". . . . a person holding a commercial radio operator license. . . ." The text in § 73.1870(a) is amended to add permit to the phrase pertaining to "radio operator license" *or permit*. (See Appendix item 10.)

(j) The following FCC policies are added to the policy listing in Subpart H, Part 73:

Policy statement regarding advancement of minority ownership in broadcasting. (§ 73.4140).

Public notice regarding incomplete and patently defective AM and FM construction permit applications. (§ 73.4015). (See Appendix items 11 and 12.)

(k) The FCC Report citation in the policy listing, § 73.4097, EBS attention signal tests on automated programming systems, is incorrectly stated as 72 FCC 2d 780. It is corrected to read 72 FCC 2d 788. (See Appendix item 13.)

(l) In the Report and Order in General Docket No. 82-334, regarding spectrum utilization policy for fixed and mobil services in the 947 MHz—40 GHz band, an inadvertent error was made in amending § 78.101. A "new paragraph (d)" was added. The rule section contained two paragraphs prior to the addition of "new . . . (d)"; obviously, the new paragraph should be designated (c), and is so changed via this Order. (See Appendix item 14.)

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rulemaking, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

5. Therefore, it is ordered, That pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73 and 78 of the FCC Rules and Regulations are amended as set forth in the attached Appendix, effective on the date of publication in the **Federal Register**.

6. For further information on this *Order*, contact Steve Crane, (202) 632-5414, Mass Media Bureau.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303).

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

PART 73—[AMENDED]

1. 47 CFR 73.61 is amended by revising paragraphs (b) and (b)(2) and Note 2; and by revising paragraph (a)(1) and redesignating it paragraph (c).

§ 73.61 AM directional antenna field measurements.

* * * * *

(b) Partial and skeleton antenna proof of performance measurements must be made and analyzed pursuant to the procedures given in §§73.154 and 73.186 according to the following schedule:

* * * * *

(2) For stations not having an approved sampling system, a skeleton proof of performance measurement must be completed during each calendar year that a partial proof of performance measurement is not completed as required by paragraph (b)(1) of this section.

(c) The station must have correctly functioning field strength measuring equipment readily available to perform the measurements described in paragraphs (a) and (b) of this section.

* * * * *

Note 2.—Prior to the amendments in § 73.93, AM operator requirements, (Fourth Report and Order in the Radio Operator Licensing Program effective 8/7/81. 46 FR 35450, July 8, 1981), AM stations employing First Class Radiotelephone Operators, or AM stations which were not remotely controlled when using their directional antenna systems, were exempt from the requirements of paragraph (b) of this section. These exemptions continue until such time as the need for these periodic antenna proof measurements for all stations using directional antennas is addressed in a future rule making proceeding.

2. 47 CFR 73.68 is amended by revising paragraph (d) to read as follows:

§ 73.68 Sampling systems for antenna monitors.

* * * * *

(d) In the event that the antenna monitor sampling system is temporarily out of service, the station may be operated, pending completion of repairs, for a period not exceeding 60 days without further authority from the FCC, if

(1) The base currents, their ratios, and the deviations of those ratios, in percent, from the values specified in the station authorization are determined for each radiation pattern used, as often as necessary to ensure proper directional antenna system operation and,

(2) Field strength measurements, at each monitoring point specified in the station's authorization, are read at least once each calendar week.

* * * * *

3. 47 CFR 73.69 is amended by revising paragraph (b) to read as follows:

§ 73.69 Antenna monitors.

* * * * *

(b) In the event an antenna monitor becomes defective, the station may be operated without the monitor pending its repair or replacement for a period not in excess of 60 days without further authority from the FCC, if

(1) The base currents, their ratios, and the deviations of those ratios, in percent, from the values specified in the station authorization are determined for each radiation pattern used, as often as necessary to ensure proper directional antenna system operation and,

(2) Field strength measurements, at each monitoring point specified in the station's authorization, are read at least once each calendar week.

* * * * *

4. 47 CFR 73.207 is amended by removing paragraph (b)(2)(ii) and revising Table B—Minimum Distance Separation Requirements in Kilometers to read as follows:

§ 73.207 Minimum distance separation between stations.

* * * * *

TABLE B.—MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS

Relation	Co-Channel	Adjacent Channels			I.F.
	0 kHz	200 kHz	400 kHz	600 kHz	10.6/10.8 MHz
A–A	132	85	45	37	8
A–B1	180	113	62	54	16
A–B	206	132	76	69	16
A–C1	239	164	98	90	32
A–C	242	177	108	100	32
B1–B1	197	131	70	57	24
B1–B	223	149	84	71	24
B1–C1	256	181	106	92	40
B1–C	259	195	116	103	40
B–B	237	164	94	74	24
					8
B–C1	271	195	115	95	40
B–C	274	209	125	106	40
C1–C1	292	217	134	101	48
C1–C	302	230	144	111	48
C–C	306	241	153	113	48

5. 47 CFR 73.681 is amended by revising the definition of *Effective Radiated Power* to read as follows:

§ 73.681 Definitions.

* * * * *

Effective radiated power. The product of the antenna input power and the antenna power gain. This product should be expressed in kW and in dB above 1 KW (dBk). (If specified for a particular direction, effective radiated power is based on the antenna power gain in that direction only. The licensed effective radiated power is based on the maximum antenna power gain. When a station is authorized to use a directional antenna or an antenna beam tilt, the direction of the maximum effective radiated power will be specified.) Where circular or elliptical polarization is employed, the term effective radiated power is applied separately to the horizontally and vertically polarized components of radiation. For assignment purposes, only the effective radiated power authorized for the horizontally polarized component will be considered.

* * * * *

6. 47 CFR 73.688 is amended by removing paragraph (b); removing paragraph (c) marked [Reserved]; and paragraphs (e)(1) and (2), both marked [Reserved]; and by redesignating paragraphs (d) and (e) introductory text, and (e) (3) and (4) as (b) and (c) introductory text, and (c)(1) and (2) to read as follows:

§ 73.688 Indicating instruments.

* * * * *

(b) The function of each instrument shall be clearly and permanently shown on the instrument itself or on the panel immediately adjacent thereto.

(c) In the event that any one of these indicating instruments becomes defective, when no substitute which conforms with the required specifications is available, the station may be operated without the defective instrument pending its repair or replacement for a period not in excess of 60 days without further authority of the FCC, provided that:

(1) If the defective instrument is the transmission line meter used for determining the output power by the direct method, the operating power shall be determined or maintained by the indirect method whenever possible or by using the operating parameters of the last radio stage of the transmitter during the time the station is operated without the transmission line meter.

(2) If conditions beyond the control of the licensee prevent the restoration of the meter to service within the above allowed period, informal request in accordance with § 73.3549 may be filed with the Engineer in Charge of the radio district in which the station is located for such additional time as may be required to complete repairs of the defective instrument.

7. 47 CFR 73.933 is amended by revising paragraph (b)(7) to read as follows:

§ 73.933 Emergency Broadcast System operation during a National level emergency.

* * * * *

(b) * * *

* * * * *

(7) TV Broadcast stations shall display an appropriate EBS slide and then transmit all announcements visually and aurally in the manner described in § 73.1250(h).

* * * * *

8. 47 CFR 73.936 is amended by revising paragraph (d)(3) to read as follows:

§ 73.936 Emergency Broadcast System operation during a State level emergency.

* * * * *

(d) * * *

* * * * *

(3) All licensees participating in the State level EBS shall discontinue normal programming and follow the transmission procedures set forth in the appropriate EBS Checklist and State EBS Operational Plan (§ 73.921) under the State and Local Level Instructions. Stations which provide foreign language programming may transmit emergency announcements in the foreign language prior to broadcasting such announcements in English. TV broadcast stations shall display and appropriate EBS slide and then transmit all announcements visually and aurally in the manner described in § 73.1250(h).

* * * * *

9. 47 CFR 73.1860 is amended by revising paragraph (a) to read as follows:

§ 73.1860 Transmitter duty operators.

(a) Each AM, FM or TV broadcast station must have at least one person holding a commericial radio operator license or permit (any class, unless otherwise otherswise endorsed) on duty in charge of the transmitter during all periods of broadcast operation. The operator must be on duty at the transmitter location, a remote control point, an ATS monitor and alarm point, or a position where extension meters are installed under the provisions of § 73.1550.

* * * * *

10. 47 CFR 73.1870 is amended by revising paragraph (a) to read as follows:

§ 73.1870 Chief operators.

(a) The licensee of each AM, FM, or TV broadcast station must designate a person holding a commercial radio operator license or permit (any class, unless endorsed) to serve as the station's chief operator. At times when the chief operator is unavailable or unable to act (e.g., vacations, sickness), the licensee shall designate another licensed operator as the acting chief operator on a temporary basis.

* * * * *

11. New 47 CFR 73.4015 is added to Part 73 to read as follows:

§ 73.4015 Applications for AM and FM construction permits, incomplete or defective.

See Public Notice, FCC 84–366, dated August 2, 1984, 49 FR 47331, December 3, 1984.

12. 47 CFR 73.4140 is revised by adding new paragraph (c) to read as follows:

§ 73.4140 Minority ownership; tax certificates and distress sales.

* * * * *

(c) See Policy Statement, General Docket 82-797, FCC 82-523, adopted December 2, 1982. 92 FCC 2d 849.

13. 47 CFR 73.4097 is revised to read as follows:

§ 73.4097 EBS attention signal tests on automated programming systems.

See Public Notice dated March 1, 1979. 72 FCC 2d 788; 44 FR 17792, March 23, 1979.

PART 78—[AMENDED]

§ 78.101 [Amended]

14. 47 CFR 78.101 Power limitations, is amended by redesignating paragraph (d) as paragraph (c).

[FR Doc. 84-33454 Filed 12-24-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Refuge Specific Hunting Regulations; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on regulations governing hunting on national wildlife refuges that appeared in the Federal Register of Wednesday, September 19, 1983 (49 FR 36736). Corrections are made to the regulations for migratory game bird hunting at Lower Suwannee and Lower Hatchie National Wildlife Refuges and for big game hunting at Mark Twain National Wildlife Refuge (NWR). To avoid confusion between the general provision prohibiting baiting on refuges and the Service's policy of permitting hunting on national wildlife refuges in Alaska in accordance with State regulations, § 32.2(h) is further clarified.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Chief, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (telephone 202-343-4311).

SUPPLEMENTARY INFORMATION: The migratory game bird hunting regulations for Lower Suwannee and Lower Hatchie NWR and the big game hunting regulations for Mark Twain NWR were incorrect as published in the final rule (49 FR 36736). These regulations are corrected to read as they were published in the proposed rule (49 FR 27334, July 3, 1984).

The final rule on refuge specific regulations (49 FR 36736) was developed for national wildlife refuges in the lower 48 States, and the general provision prohibiting baiting on refuges was developed to address problems associated with this practice on refuges in the lower 48 States. As stated in the preamble of the final rule (page 36740), hunting on national wildlife refuges in Alaska is authorized in accordance with State regulations. Therefore, paragraph §32.2(h) is corrected to clarify that baiting on national wildlife refuges in Alaska is authorized in accordance with State regulations.

Accordingly, FR Doc. 84-24681 appearing at page 36736 in the issue of September 19, 1984, is corrected as follows:

§ 32.2 [Corrected]

1. On page 36740 in § 32.2(h), in the second column, add the following sentence to the paragraph: "(Baiting is authorized in accordance with State regulations on national wildlife refuges in Alaska.)"

§32.12 [Corrected]

2. On page 36742 in § 32.12(h)(2), third column, third line, delete "moorhens, purple".

3. On page 36747 in § 32.12(kk), third column, third line, "ducks, geese and coots" should read "migratory game birds".

§ 32.32 [Corrected]

4. On page 36756 in § 32.32(n)(3), third column, fifth line, "shotgun" should read "archery".

Dated: December 14, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-33397 Filed 12-24-84; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 645

[Docket No. 41156-4156]

Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement the Fishery Management Plan for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). The rule (1) establishes a minimum harvestable size limit; (2) establishes harvest restrictions for egg-bearing spiny lobsters; (3) prohibits the taking of spiny lobsters by certain gear and methods; and (4) requires degradable panels on lobster traps. The regulations are designed to prevent overfishing and increase production of spiny lobsters.

EFFECTIVE DATE: January 1, 1985.

ADDRESSES: The final regulatory impact review/regulatory flexibility analysis may be obtained from Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Don Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Assistant Administrator for Fisheries initially approved the fishery management plan for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands on July 14, 1982, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Proposed regulations to implement the FMP, prepared by the Caribbean Fishery Management Council (Council), were published on September 3, 1982 (47 FR 38950). Comments on the FMP and proposed rule were invited through October 18, 1982.

Because the preponderance of the spiny lobster landings come from waters under the jurisdiction of Puerto Rico and the U.S. Virgin Islands, promulgation of this final rule has been withheld pending adoption of comparable regulations by the two local governments. Puerto Rico and the U.S. Virgin Islands have adopted similar regulations allowing implementation of this final rule. The effective date for this final rule is January 1, 1985, to coincide with the effective date of Puerto Rico's regulations. The U.S. Virgin Islands implemented compatible regulations on June 1, 1984, inside their territorial waters.

The preamble to the proposed rulemaking contained a description of the spiny lobster fishery, the condition of the stocks, the economic value of landings, and fishing practices within the commercial and recreational sectors. Also discussed in detail were problems in the fishery (i.e., increasing number of smaller lobsters in the landings and the decreasing average size indicating a