

6/21/01

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

RECEIVED

JUN 25 2001

FCC MAIL ROOM

In the Matter of }
 }
Lockheed Martin Global Telecommunications, }
Comsat Corporation, and Comsat General }
Corporation, Assignor }
 }
And }
 }
Telenor Satellite Mobile Services, Inc. }
And Telenor Satellite Inc., Assignee }
 }
Applications for Assignment of Sections 214 }
Authorizations and Earth Station Licenses and }
Declaratory Ruling Request }

File No. SES- ASG-20010504
00896 **received**

JUN 27 2001

Satellite Engineering Branch
International Bureau

Provisional Petition to Deny and Petition for Protective Orders

Litigation Recovery Trust ("Petitioner" or "LRT"), on behalf of its members and its associated entities¹, hereby submits the instant Provisional Petition to Deny and Petition for Protective Orders.

Previously, LRT submitted a Petition for Additional Issue for Review ("Review Petition") in the Commission's current reconsideration proceeding related to the merger of Comsat Corporation ("Comsat") and Lockheed Martin Corporation ("Lockheed") (File Nos. SAT-T/C-20000323-00078, *et al*).² The said Review Petition referenced a number of issues related to the sale by Comsat of one third of its equity interest in Inmarsat, Ltd.³ to Telenor

¹ Litigation Recovery Trust represents the rights and claims of certain individuals, and includes the following entities: Committee to Restructure the International Satellite Organizations ("CRISO") and BelCom Minority Shareholders and Claimants Committee ("BelCom Committee"). The LRT claims relate to a series of business disputes with Comsat Corporation dating to 1995. Since that time, LRT has monitored and reviewed the operations of Comsat on a continuing basis, and has periodically sought the intervention of the Commission with respect to perceived statutory and regulatory violations and compliance issues. The instant petition is part of this continuing monitoring and assessment program.

² As a result of the merger, Comsat became a wholly owned subsidiary of Lockheed Martin Global Telecommunications ("LMGT")

³ Inmarsat was founded in 1979 as an intergovernmental organization to provide satellite-based maritime communications, and later expanded to include a full range of land-mobile and aeronautical services. The

ASA. As outlined below, certain of the issues raised in the Review Petition are related to the issues under consideration in the current proceeding.

Also as addressed below, LRT finds that the information submitted to date by parties in this proceeding is incomplete, as they have failed to consider issues which are central to the regulatory approval process, which, based on precedents, will be followed by the Commission in this proceeding. LRT has outlined below the issues and related questions, which, based on the current information placed on the record, it believes can and should result in the denial of the applications. However, LRT is expressly reserving judgment, pending further review of the responses of the parties, through pleadings in this proceeding and/or direct communications, designed to address the open issues cited herein. It is for this reason that LRT has at this point qualified its petition as "provisional."

1. The Current Proceeding

The Commission is reviewing applications for consent to assignment of certain Title II common carrier authorizations and Title III radio licenses submitted jointly by LMGT, Comsat, and Comsat General Corporation ("Comsat General") (collectively "Comsat"), and Telenor Satellite Mobile Services, Inc. ("TSMS") and Telenor Satellite, Inc. ("TSI") (collectively "Telenor"). Comsat and Telenor are referred to collectively as Applicants.

In essence, Comsat is seeking Commission authority to assign the licenses, authorizations and assets of its Comsat Mobile Communications division ("CMC"), pursuant to terms of an Asset Purchase Agreement dated as of March 27, 2000 with TSMS and Telenor Broadband Services, as guarantor.⁴ As a result of this transaction, Comsat, other than maintaining its remaining equity interest in Inmarsat, will terminate its involvement in the L-Band mobile satellite business.⁵

organization was privatized in 2000, and is a privately incorporated company known as Inmarsat Ventures, Ltd. ("Inmarsat"). It is scheduled to conduct an initial public offering later this year.

⁴ As a result of Lockheed's earlier sale of one third of Comsat's ownership interest in Inmarsat, Ltd., Telenor has become the largest equity holder in Inmarsat with 15% of the issued stock. Comsat owns 14% of Inmarsat.

⁵ As noted below, the downsizing divestiture effect of this transaction on its overall continuing operations has not been addressed by Comsat in its application.

The subject applications under consideration include various earth station, Private Land Mobile Radio (PLMR), and experimental licenses⁶, as well as international Section 214 authority currently held by Comsat.⁷ The proposed transaction involves the assignment of both private and common carrier Title III licenses.

As reported by the Applicants, the assignment of the common carrier Title III licenses from Comsat to Telenor will result in the indirect foreign ownership of the licensee, TSI, in excess of the 25- percent foreign ownership limit in Section 310 (b)(4) of the Communications Act of 1934, as amended (" the Communications Act").

Telenor has reported that Telenor Broadband Service AS of Norway ("Telenor Broadband") established TSMS as a U. S. holding company earlier this year to serve as the proposed buyer of the CMC business from Comsat. TSMS wholly owns TSI, the proposed licensee. TSMS reports that it is 100% owned by Telenor Broadband, which is in turn 100% owned by Telenor ASA, a company incorporated in Norway and based in Oslo.⁸ Norway is a member country of the World Trade Organization.

Seventy nine percent of Telenor ASA stock is owned by the Kingdom of Norway and the remaining twenty one percent is publicly traded on the Oslo and NASDAQ Stock Exchanges.⁹ The company to date has not provided a full breakdown on the percentage of stock held by US citizens and entities. LRT requests that this data be provided in the company's reply comments.

⁶ Satellite Earth Stations: SES- ASG- 20010504- 00896 Section 214 Authority: ITC- ASG- 20010504- 00302 Section 310(b)(4) Petition for Declaratory Ruling: File No. ISP- PDR- 20010510- 00025 Private Land Mobile Radio: ULS Application File No. 0000449956, Call Sign KB42877 Experimental Licenses: Call Sign KA2XHN, File No. 41- EX- AL- 2001 Call Sign WA2XGG, File No. 42- EX- AL- 2001 Call Sign WC2XMG, File No. 43- EX- AL- 2001 Call Sign WC2XNE, File No. 44- EX- AL- 2001 Call Sign WA9XBL

⁷ The application also includes any licenses or permits which might be granted to Comsat while this proceeding is pending before the Commission. With regard to such later acquired licenses, the parties request a blanket exception to applicable cut-off requirements pursuant to Sections 25.116(b)(3) and 1.933(c) of the Commission's rules. LRT specifically supports Applicants' blanket exemption request.

⁸ Telenor ASA, the ultimate parent of the US operating companies, was incorporated in 1994 as a result of Norway's privatization of its telecommunications carrier. In 2000, the company completed the sale of approximately 21% of its equity to the public.

⁹ Telenor reports that 14% of its shares are held by non Norwegians. No further information is provided with regard to stock ownership of Telenor ASA. Based on available information, it appears that 79% of the stock is held by the Kingdom of Norway, 5% by Norwegian citizens and 14% by non Norwegians, some percentage of whom are likely to be US citizens.

Applicants request a declaratory ruling that the acquisition of these authorizations and licenses by TSI and the proposed operation by TSMS of the CMC business, is permitted under Section 310 of the Act and will serve the public interest. Additionally, Applicants request that the Commission approve the assignment of various international Section 214 authorizations from Comsat to TSI. Applicants also request non- dominant classification for all U. S.- foreign point routes except for U. S. -Norway.

2. Comments On Application for Approval of Assignments
and Petition for Declaratory Ruling

The Applicants have submitted a lengthy and detailed Application for Approval of Assignments and Petition for Declaratory Ruling ("Approval Application") which outlines the fundamental regulatory rationale for the subject transaction. Applicants contend that the acquisition of the CMC business by Telenor's US operating companies will serve the public interest by "enhancing competition and consumer choice in the marketplace for US international mobile satellite services ("MSS")." Approval Application. 2. The Applicants note that as a result of the transaction,

The combination will fill existing gaps in both companies' geographic reach, giving U.S. customers a new choice for seamless worldwide coverage from a single provider. Moreover, Telenor plans to offer MSS features and services not currently available from CMC, thereby expanding product choice. Id.

The Applicants also contend that the proposed transaction "poses no risk of harm to the already competitive marketplace for U.S. international mobile communications services." Id. Specifically, it is noted that since Telenor presently does not originate or provide international MSS from the US¹⁰, "approving the combination of CMC and Telenor will not lessen competition for such services." Id.¹¹

¹⁰ Applicants report that a Telenor ASA wholly- owned subsidiary, Telenor Global Services AS, does hold a Section 2145 authorization for global facilities-based and resale service. (FCC File No. ITC-214-19980303-00160(1998)) (see Approval Application, 10). Presumably this authorization is being held as the basis of establishing a future telecommunications service offering. Telenor should define the purpose of this authorization in its reply comments.

¹¹ This point fails to address the fact that Telenor could expand its services into the US to compete with CMC and other MSS providers presenting consumers with increased choices.

It is the position of the Applicants that the proposed transaction will “enhance the range and quality of MSS available to US customers, while also satisfying the United States’ market-opening commitments under the World Trade Organization’s Agreement on Basic Telecommunications Services (the “WTO Basic Telecom Agreement”).”^{id.}

Applicants contend that the proposed transaction presents no legal impediments to the Commission’s approval grant. Citing the *Deutsche Telekom-VoiceStream* order¹², the parties maintain that the US subsidiaries of the Norwegian-incorporated Telenor ASA “are fully qualified to hold the Title III licenses and Title II authorizations at issue here.” Approval Application, 4.

Further, it is argued that since Norway is a WTO member country, the entry of Telenor’s US subsidiaries are presumed to be pro-competitive. In support of this position, Applicant’s cite the following: Telenor ASA is a publicly traded company, has no government officials on its governing Board, adheres to the European Union’s telecommunications regulatory principles and is subject to US and Norwegian securities laws and regulations.

Applicants also report that Telenor has “initiated negotiations with relevant U.S. executive branch agencies and will abide by the terms of an anticipated agreement with those agencies with respect to national security and law enforcement issues.

Applicants seek a declaratory ruling that the proposed transaction will serve the public interest.

3. Special Considerations Raised With Respect to Assignee

Applicants maintain that Telenor is financially, legally and technically qualified to receive a grant of the assignments of the subject licenses and authorizations. In support of this position, it is noted that Telenor Broadband, indirect owner of the assignee, is a leading global supplier of mobile satellite telecommunications services and Telenor ASA, with \$4 billion in annual sales, is financially and technically qualified to operate CMC.

¹² *Applications for Consent to the Transfer of Control of Licenses and Authorizations by Deutsche Telekom AG and VoiceStream Wireless Corp. et al, Memorandum Opinion and Order, FCC No. 01-142, 1B Docket No. 00-187*

Applicants also contend that Telenor Satellite's eligibility to hold CMC's Title II authorizations and Title III licenses is consistent with the Communications Act¹³ and the rules and policies adopted thereunder. Specifically, applicants maintain that the structure under which Telenor Satellite, a US corporation, is wholly owned by TSMS, a US corporation whose ultimate parent is Telenor ASA, "a publicly traded Norwegian corporation, owned in large part by non-US shareholders, including the Kingdom of Norway is fully consistent with the corporate governance approach adopted in the *Deutsche Telekom-VoiceStream Order*." Approval Application, 20, emphasis added.

Clearly, by describing the foreign shareholder control as "including" the Kingdom of Norway, Applicants have purposely understated the fundamental problem to their proposed corporate structure, i.e. the absolute control of Telenor by the Kingdom of Norway.

A. Analysis of Section 310 (b)(4) Control Issue

The proposed assignment of licenses and authorizations by Comsat to Telenor will result in these US government permits being issued to companies ultimately wholly-owned by Telenor ASA, a company organized under the laws of Norway, in which the Kingdom of Norway still owns and will continue to own a controlling interest.¹⁴ This situation is clearly distinguished from Deutsche Telekom where the German government was not (and currently is not) in control of the US licenses, following the Voice Stream merger.

In the DT-VS merger, the parties petitioned the Commission to find that the resulting indirect foreign and government ownership of their common carrier wireless licenses was permissible under section 310(b)(4) of the Act.¹⁵ In the DT-VS Order the Commission resolved the relationship between the restrictions on foreign government ownership in section 310(a) of

(rel. April 27, 2001) ("DT-VS Order")

¹³ Communications Act of 1934, as amended, 47 USC § 151, et seq.

¹⁴ The Norwegian Government began privatizing Telenor in 1994. As detailed above and discussed further below, the Kingdom of Norway currently owns approximately 79 percent of Telenor ASA. See *supra* note 9 and accompanying text. Post-transaction, the Norwegian government's interest in the licensees will remain at approximately 79 percent. This situation is clearly distinguished from the facts at issue in the Deutsche Telekom-VoiceStream merger. There, the government of Germany held approximately 60% of the voting stock of Deutsche Telekom prior to the merger, and following completion of the transaction, it held approximately 45% of the issued shares. (see DT-VS Order at footnote 109 and Parts III.C and IV discussing alien and foreign government ownership of Deutsche Telekom).

¹⁵ Specifically, the parties requested that the Commission find that DT's indirect foreign control over VoiceStream's and Powertel's licensee subsidiaries and non-controlling interests in other wireless carriers is in the public interest. VoiceStream DT Application at 1, 18, 33-44; Powertel DT Application at 1, 9, 22-24.

the Communications Act and the provision providing for indirect foreign government ownership in section 310(b)(4), as a matter of first impression for the Commission.¹⁶

In its ruling, the Commission concluded that, pursuant to the terms of the statute, indirect ownership of the licensee by a foreign government, foreign corporation, and aliens resulting from the proposed transaction should be addressed only under section 310(b)(4). The said section provides that an alien or foreign government or their respective representatives or any corporation organized under the laws of a foreign country may hold greater than a 25-percent interest in a corporation that controls a corporate licensee, unless the Commission finds that the public interest will be served by refusal or revocation of the license.¹⁷

Section 310 provides several discrete categories of restrictions on foreign ownership of radio licenses. Sections 310(a), (b)(1), and (b)(2) by their express terms prohibit radio licenses from being "granted to or held by" foreign governments and their representatives, aliens and their representatives, and foreign corporations.¹⁸ Section 310(b)(3) extends the prohibition to corporations that are more than 20 percent owned directly by the entities identified in sections 310(a), (b)(1), and (b)(2).¹⁹

In the DT-VS Order, the Commission concluded that a consistent approach ought to be applied to its analysis of foreign government ownership, as the language in section 310(b)(1) prohibiting aliens from holding licenses parallels the language in section 310(a) prohibiting foreign governments from holding licenses. In reaching its decision, the Commission also distinguished its earlier Telecom Finland ruling:

... in Telecom Finland, the only previous decision to discuss the relationship between sections 310(a) and 310(b)(4), the International Bureau was persuaded by the petitioners' argument and adopted its language that, "[s]ection 310(b)(4) creates an exception to section 310(a) to permit a foreign government to hold indirectly a U.S. license."²⁰ We believe the better reading is that transactions involving the types of indirect foreign ownership addressed by section 310(b)(4) are governed solely by that section and fall outside the scope of section 310(a) and (b)(1)-(3). Telecom Finland's

¹⁶ The Commission's International Bureau also addressed this issue in *In the Matter of Telecom Finland, Ltd.*, Order, 12 FCC Rcd 17648 (Int'l Bur. 1997) (*Telecom Finland*).

¹⁷ See 47 U.S.C. § 310(b)(4).

¹⁸ 47 U.S.C. §§ 310(a), 310(b)(1)-(b)(2).

¹⁹ 47 U.S.C. § 310(b)(3).

²⁰ *Telecom Finland*, 12 FCC Rcd at 17651, para. 7 (emphasis added).

reference to section 310(b)(4) as an exception to section 310(a) unnecessarily complicates the analysis. To the extent that Telecom Finland can be read to conflict with today's decision, it is hereby overruled.

Should the Comsat-Telenor transaction be approved, the Norwegian government will own approximately 79 percent of Telenor ASA's stock.²¹ Total non-U.S. ownership of Telenor (i.e., ownership by the Kingdom of Norway, aliens and foreign corporations) will be between 84 and 100 percent.²² Thus, both the Norwegian government's holdings and the total non-U.S. holdings post merger will far exceed the 25-percent benchmark set forth in section 310(b)(4). In addition, Telenor is a foreign corporation and its holdings will exceed the 25-percent benchmark. The Commission must therefore examine whether denying such levels of alien, foreign government, and foreign corporate ownership would be consistent with

In making this public interest determination, the Commission, consistent with the DT-VS Order, must first analyze whether there are special risks to competition in the United States associated with the Norwegian government's ownership of Telenor. The Commission must also determine whether Telenor's control of the licenses and authorizations at issue raises concerns relating to national security, law enforcement, and public safety and the public interest.

B. Analysis of Competitive Impact of the Transaction

The Commission has previously set forth the standards for analyzing competitive concerns resulting from foreign participation in U.S. telecommunications markets (see Foreign Participation Order.²³) Specifically, the Commission has found that applying an "open entry"

²¹ See *DT-VS Order* Part I.A.2 discussing the German government ownership of DT.

²² See footnote 9, *supra*

²³ See generally *Foreign Participation Order*, 12 FCC Rcd at 23894, para 4. In the *Foreign Participation Order*, the Commission determined that U.S. consumers and companies would reap tangible benefits from the removal of obstacles to entry into all telecommunications service markets, including those entry barriers that exist in the U.S. market. *Id.* at 23894-95, paras. 4-5. The Commission concluded that in light of market access commitments undertaken by WTO members, as well as the Commission's increasingly more deregulatory framework, it served the public interest to take steps, in parallel with the United States' major trading partners, to ease requirements for entry by foreign companies into the U.S. market. *Id.* at 23983-94, para. 2. The Commission observed that the WTO commitments would create obligations on foreign governments to allow U.S. companies to enter previously closed foreign markets and to develop competing networks abroad for local, long distance, wireless, and international services. *Id.* at 23894, para. 4. Likewise, the Commission reasoned that additional foreign

standard under section 310(b)(4) to indirect foreign ownership in licensees involving WTO Members, in conjunction with enhanced safeguards and WTO Members' commitments to liberalize and privatize their markets, would better achieve its pro-competition goals.²⁴ The Commission removed the previous Effective Competitive Opportunities (ECO) test from its public interest analysis in making section 310(b)(4) determinations with respect to WTO Members.²⁵ As observed by the Applicants²⁶, the Commission replaced the ECO test with a rebuttable presumption in favor of entry for applicants from WTO Members.²⁷ In adopting this presumption as a factor in its public interest analysis, the Commission made no distinction between government and private foreign ownership.

Over the past decade, the Commission has generally acknowledged the benefits of increased foreign participation in the U.S. telecommunications marketplace, while remaining sensitive to its responsibility to promote U.S. competition and to protect national security and other interests raised by the Executive Branch in reviewing proposed foreign ownership. In this process, the Commission has correctly acknowledged the possibility that entry by a foreign carrier might under some circumstances be so detrimental that the standard competitive safeguards would be ineffective.²⁸ In such a case, the Commission has made clear that it would impose conditions on an authorization, or where an application poses a "very high risk to competition" in the U.S. market that cannot be addressed by such conditions, deny an application.²⁹

The Approval Application does not present sufficient data to allow a reviewer to make a proper analysis of the likely impact which the combining of CMC and Telenor will have in terms of competitive effects. Data is presented with respect to new and expanded services which will

investment in the U.S. market would promote further competition and result in substantial benefits to U.S. consumers, including lower prices for existing services and greater service innovation. *Id.* at 23896-97, para. 10.

²⁴ *Foreign Participation Order*, 12 FCC Rcd at 23897-98, para. 13.

²⁵ *Id.* The ECO test required, as a condition of foreign carrier entry into the U.S. market, that there be no legal or practical restrictions on U.S. carriers' entry into the foreign carrier's market. See *Market Entry and Regulation of Foreign Affiliated Entities*, IB Docket No. 95-22, Report and Order, 11 FCC Rcd 3873, 3877, para. 6 (1995) (*Foreign Carrier Entry Order*).

²⁶ See Approval Application, 24

²⁷ *Foreign Participation Order*, 12 FCC Rcd at 23913, para. 50 (applying standard to applications for section 214 authority, as well as for approval under section 310(b)(4)). In DK-VS Order, the Commission stated that it relies on the increase in global competition coupled with dominant carrier safeguards to protect competition in U.S. markets. It also noted that, to the extent that a WTO member fails to fulfill its WTO obligations, these are trade violations that can be addressed through the WTO dispute resolution process.

²⁸ *Foreign Participation Order*, 12 FCC Rcd at 23914, para. 52.

²⁹ *Id.*

be able to be offered by the expanded company, but no projections and other relevant market information is presented to permit a proper assessment by reviewers. This shortcoming should be addressed by the parties in their reply Comments.

C. Consideration of Current Market Factors On
the CMC-Telenor Combination

As noted, consideration here must be given to the possible competitive impact, which the proposed combination of CMC and Telenor may have on the MSS marketplace. Applicants have downplayed any negative impacts by providing a picture of an ever-expanding marketplace where a strengthened, combined Telenor-CMC will contest with larger and expanding companies.

However, another picture could be presented, one that is hardly as rosy.

The marketplace for the full range of mobile satellite carriers is presently peopled with as many bankruptcy lawyers, investment bankers and turnaround and work-out specialists as communications engineers. Over the last three years, Iridium, ICO and Orbital Sciences have found their way into Chapter 11 proceedings. Current press reports speculate that Globalstar, which some six months ago ceased servicing its debt and has, as of Monday, been unable to maintain its listing requirements with NASDAQ, will soon find itself in bankruptcy as well. Meanwhile, the industry awaits the entry of Teledesic and Spaceway. To these companies can be added some number of the 28 Inmarsat land earth station operators and 500 certified Inmarsat service providers.

Against this landscape, the entry of a combined Telenor-CMC operation can be seen to constitute a potential new and growing market force, which Applicants stress will offer "seamless" worldwide service, incorporating a host of technical and operational efficiencies. The Commission must seriously weigh these factors to determine the competitive impact which will likely result from the creation of the expanded Telenor MSS business.

Applicants present a cogent argument that the combining of the MSS operations will produce a broad array of new services and, by joining earth station resources, create a more efficient operation. They argue that this combination of factors will allow the new company to better compete in the marketplace. At the same time, this situation can produce a new

company, which can grow over time to exercise market dominance. This is especially the case where the industry is found to include large companies experiencing severe economic reverses, new entrants (however well funded) and hundreds of small companies (Inmarsat service providers) that can exercise no market power whatsoever.

It is therefore vital that the Commission secure the necessary data from the Applicants and other industry participants to be able to reach a proper assessment of the potential economic impact of the proposed transaction upon the relevant market. Only with access to such comprehensive data can the Commission and all interested parties be able to reach an informed judgment concerning the estimated competitive effect which the combined companies will have on the MSS marketplace in the US directly and upon foreign carriers serving the US market.

D. Promotion of Competition in the US

Furthermore, specifically with respect to the US market, it is necessary for the Commission to determine the likely impact the proposed transaction will have in promoting competition.

Based on the data included in the Approval Application, the Commission cannot make such a finding. While the parties include general information describing hoped for gains through increased efficiencies produced by joining technical facilities and operating staffs, no assessment is included to predict the likely effect which the transaction will have to drive competition in the US mobile satellite market. The Applicants must provide such detailed information to permit the Commission to make its required findings.

E. Unique Considerations Related to Kingdom of Norway

In this connection, serious attention must be given to the market power, which can result from the participation in and control of Telenor by the Kingdom of Norway.

The Government of Norway is unlike a private sector control party. A government, any government, has unique powers to raise and spend monies, far different from capabilities of private sector entities.

These capital raising and spending decisions of a government can derive from many considerations, which are not market driven and can disrupt normal market forces. For example, it is possible for the Kingdom of Norway to increase its spending for communications services and facilities ordered and received from Telenor at price levels that can, in effect, operate as a type of subsidy to Telenor.

Again, the Kingdom of Norway could undertake such actions for various reasons, which may not be marketplace related. However, the end result of such actions could artificially increase cash flow and operating margins, and thereby permit Telenor to reduce its prices for MSS facilities, leading to an increase in its share of market and adversely impacting other competitors in the US and other countries.

It is noted that Telenor has set out to become a dominant player in the MSS marketplace. It is the largest shareholder in Inmarsat. It is seeking to acquire the assets of CMC, the principal founder and dominant force behind developing and expanding Inmarsat. It could be that a combined company objective and national policy seeks to make Telenor the leading company in the MSS field as a way of providing Telenor and the Government of Norway with a platform to promote its position within the world telecommunications industry.

These are quite natural and wholly acceptable objectives. The key issue is whether the ownership and participation by the Kingdom of Norway in helping to achieve these or other competitive and/or policy goals may provide Telenor certain assets and advantages, which can be seen as anti-competitive. The Commission must seek the necessary information and consider effective safeguards to address these possibilities.

In this connection, LRT is including as Exhibit 1 a set of suggested Protective Orders to be reviewed and considered by the Commission and other interested parties in the event that the Commission grants the subject applications. The objective of such orders is to provide an effective mechanism to monitor the Telenor business to assure that it does not engage in practices of an anti-competitive nature.

F. National Security Concerns

It is critical that the Commission, in coordination with the Executive Branch, carefully study and assess the possible effects which this particular transaction can have with respect to a full range of national security issues.

The CMC licenses and authorizations at issue have been issued to Comsat, a US Government sponsored enterprise. Since its creation in 1962, Comsat has operated simultaneously as a quasi- government agency and a private stock corporation. Comsat was (and continues) as the government's signatory representative to INTELSAT and Inmarsat treaty organizations, which, by treaty covenant, necessarily limited the company's activities to non defense matters.

These restrictions notwithstanding, as a government sponsored entity, Comsat could freely and routinely coordinate its activities with US Government agencies and departments. In the case of Inmarsat related activities conducted by CMC, it goes without saying that the vast amount of communications data flowing through Comsat ground stations could be coordinated, monitored, and exchanged, within the proper national security restrictions and parameters, as requested and required by concerned US Government agencies and departments. With the increasing sophistication of communications transmission equipment and satellite monitoring facilities, the vast Inmarsat network quite clearly has taken on ever increasing importance with regard to security matters.³⁰

As the result of the proposed sale of the CMC assets to Telenor, ready and continuing access to the CMC facilities and information will no longer be provided by a US Government sponsored corporation. Further, it will not be provided by an independent, foreign company. Rather, access to this critical data will be through a company, which is controlled by a sovereign government. This raises very serious considerations, which must be carefully studied and assessed.

Given the size and international scope of Inmarsat facilities operated by CMC, the national security implications are far more complex than those involved in the typical terrestrial wireline or cellular system, as were considered in the DT-VS Order. In light of this fact, the Commission and the Executive Branch should establish a special task force, which would involve all appropriate law enforcement and intelligence agencies and departments, to assess the full national security implications of this transaction.³¹

³⁰ As a prime example, there have been a number of published reports in recent years that satellite telephones, such as those operated via CMC Inmarsat facilities, have been used by national security agencies and forces for surveillance of and locating individuals involved in criminal activities, including terrorism.

³¹ The Commission is required to take into account the full range of federal statutes and regulations in this area, in addition to its responsibilities under the Communications Act and Communications Satellite Act. (see *Nextwave Personal Communications v. FCC*, US Ct App (DC Cir), Case No. 00-1402 "federal agencies must obey all federal laws, not just those they administer...")

Petitioners believe the national security concerns involved in operating CMC are of such a complex and vital nature as to preclude the possibility of transferring this business to the control of a company, which in turn is controlled by a foreign government. However, Petitioners recognized that these considerations are matters reserved to the appropriate US Government agencies and departments. Petitioners therefore have reserved judgment on this central question, pending their review of a complete analysis by the Commission of the national security concerns at issue in this transaction.

4. Special Considerations Raised With Respect to Assignor

In the Approval Application, Comsat has presented a series of facts and arguments, which seek to bolster its primary argument, i.e. that the transaction in combining CMC and Telenor will produce a better, more efficient and expanded MSS service. What Comsat has failed to address in any way is the reason why it, or rather its controlling parent, LMGT, has decided to sell CMC to Telenor.

Not only has Comsat/LMGT failed to address this key question, but, more importantly, it has neglected to confront the related issue- i.e. whether the transaction complies with the strict terms of the Orbit Act³² and the intent of Congress in passing the said legislation.

While Petitioners remain of an open mind on this question, they must be convinced by Comsat that the instant transaction does in fact comply with the Orbit Act and related policy considerations.

A. Significant Questions Raised by Earlier Telenor-Comsat Transaction

The instant transaction is not the first, which has involved the transfer of Comsat assets to Telenor. Last September, Lockheed sold approximately one third of Comsat's pre-existing 22.2% interest in Inmarsat, the recently privatized company. As a result of the transaction, Comsat's interest in Inmarsat was reduced to about 14%. Meanwhile, Telenor,

³² Open-Market for the Betterment of International Telecommunications (ORBIT) Act, P.L. 106-180, 114 Stat. 48 (2000)

as a preexisting signatory to the Inmarsat treaty organization, already was a shareholder of Inmarsat. As a result of its purchase of Comsat's shares, it increased its equity stake in Inmarsat to 15%, making it the largest single shareholder in the enterprise. Lockheed reported that it received \$164 million from the sale of this asset to Telenor.³³

As far as LRT can determine, the sale to Telenor of Inmarsat stock interest by Lockheed was undertaken without notice to the Commission, the Office of the President, the National Telecommunications and Information Administration of the Department of Commerce or, most importantly, the Congress. Further, as little public information was provided at the time of the transaction, observers have been left to speculate as to the likely business reasons for the stock sale.

What is particularly troubling to LRT is the fact that according to published reports, in June 2000, Lockheed was called upon to pay \$200 million under a loan guaranty it had provided for Globalstar Telecommunications LP, the new LEO satellite service established and operated by Loral Space and Communications³⁴. Concern has been raised that Comsat assets are being divested to meet capital requirements of LMGT³⁵, which, according to Lockheed financial filings with the SEC, is itself apparently experiencing widening losses since its merger with Comsat.³⁶

³³ As noted above, LRT has raised a series of issues concerning this transaction within the context of the Lockheed-Comsat merger reconsideration proceeding.

³⁴ " On June 30, 2000, the Corporation was notified that Globalstar Telecommunications, L.P. (Globalstar) failed to repay borrowings of \$250 million under a revolving credit agreement on which Lockheed Martin was a partial guarantor. In connection with its contractual obligation under the guarantee, on June 30, 2000, the [Lockheed Martin] paid \$207 million to the lending institutions from which Globalstar borrowed, which included applicable interest and fees. On that same date, Loral Space & Communications, Ltd. (Loral Space), under a separate indemnification agreement between the Corporation and Loral Space, paid Lockheed Martin \$57 million. [Lockheed Martin] is entitled to repayment by Globalstar of the remaining \$150 million paid under the guarantee, but has not as yet reached agreement with respect to the form and timing of such repayment. In light of the uncertainty of the situation regarding the amounts due from Globalstar, [Lockheed Martin] recorded a nonrecurring and unusual charge in the second quarter of 2000, net of state income tax benefits, of approximately \$141 million in other income and expenses. The charge negatively impacted net (loss) earnings for the nine month period ended September 30, 2000 by \$91 million, or \$.23 per diluted share." See Lockheed 10Q Report, emphasis in original.

³⁵ Over the last nine months, Lockheed has on several occasions issued public statements to the effect that it was seriously considering offering up to 50% of the stock of LMGT to the public, and/or entering one or more transactions with strategic partners. To date, Lockheed has completed no such transactions, which would raise significant capital. LMGT has therefore been left to operate on its own cash flow and, in the current case, apparently the sale of assets.

³⁶ As noted in the Review Petition, LRT believes that this is matter, which should be reviewed and investigated by the Commission. Such an investigation should properly involve the participation of other interested parties, including concerned Congressional committees, other licensed carriers and suppliers, users and competitors of

Comsat's equity interests in Inmarsat and INTELSAT were acquired by Comsat over many years largely through capital investment in the two treaty organizations. The capital resources available to Comsat for these investments were generally derived from surpluses generated by its Congressionally sponsored monopoly that enabled it to control domestic INTELSAT transponder sales to communications carriers.³⁷

In establishing Comsat pursuant to the Communications Satellite Act of 1962³⁸, the Congress created a continuing funding mechanism for the company through the establishment of a monopoly over domestic sales of INTELSAT capacity.³⁹ The INTELSAT mark-up revenue created cash flow for Comsat, which in turn provided revenues allowing it to pay its expenses and make various investments, including purchasing equity interests in INTELSAT and Inmarsat facilities. Over time, as noted, Comsat's equity interests grew to about 20% of INTELSAT and 22% of Inmarsat.⁴⁰

There thus arises in the view of LRT a critical question as to the true right to ownership of the Inmarsat and INTELSAT equity interests claimed by Comsat (and now Lockheed). For some years now, LRT and its members have maintained that the INTELSAT and Inmarsat ownership interests claimed by Comsat actually should be regarded as assets of the United States.⁴¹ It is clear that Comsat purchased these ownership interests using

Comsat. The preservation of INTELSAT and Inmarsat equity interests must clearly be regarded as a matter of public interest and, as such, a matter of immediate and continuing concern to the Commission.

³⁷ This Congressionally mandated monopoly was terminated upon passage of the ORBIT Act.

³⁸ 47 USC § 701 et seq.

³⁹ In effect, the monopoly operated as an indirect tax on international common carrier services. Comsat would purchase the capacity from INTELSAT and resell it to AT&T and other carriers at significant mark-up in cost. Companies such as AT&T paid Comsat for leased access to INTELSAT transponder capacity. Since the mark-up on INTELSAT charges imposed by Comsat was paid and passed along to customers by carriers such as AT&T, the ratepayers, in effect, paid an indirect tax or surcharge for their services, which benefited Comsat.

⁴⁰ Comsat also maintains a 20% interest in New Skies, NV, ("New Skies") the privatized spin-off corporation from INTELSAT which includes approximately 25% of the operating assets of INTELSAT.

⁴¹ LRT originally sought a review of certain matters related to Comsat's use of its INTELSAT and Inmarsat equity interests in the context of other proceedings. See COMMITTEE TO RESTRUCTURE THE INTERNATIONAL SATELLITE ORGANIZATIONS Petition to Enjoin Comsat Payment of Dividends from Retained Earnings, as amended, Emergency Petition to Enjoin Comsat from Using Legal Process, as amended FCC Doc. 64-SAT-DR-97, 65-SAT-DR-97 (The INTELSAT Windfall Profits Proceeding). This matter is presently being appealed by LRT to the United States Court of Appeals for the Second Circuit (*Whitely, et al v. FCC, et al* 00-4207)

proceeds largely generated by its INTELSAT monopoly, which, as noted, was really an operating surcharge or tax paid by carriers and passed along to end users in the form of communications charges.

B. ORBIT Act Prohibitions and Policies

Last year, the Congress passed the ORBIT Act, which amended the Communications Satellite Act by, among other things, providing authority for Lockheed to complete its merger with Comsat, through the acquisition of the remaining 51% of the issued and outstanding shares of Comsat via a one for one exchange for Lockheed common stock. In adopting the said legislation, the Congress permitted control of Comsat to pass from some 38,000 shareholders, including individuals and institutions, to Lockheed. However, in so doing, the Comsat corporation remained in existence and its inherent character as a government sponsored entity remained in tack and was not altered.

Given these facts and reviewing available Congressional history, it can be concluded that the Congress did not conceive that in passing the ORRBIT Act, which authorized Lockheed's merger with Comsat, it would be authorizing transfer of control to a corporation that would immediately commence divesting Comsat's primary assets literally within days of the closing of the merger on August 3, 2000. Indeed, as discussed below, the record clearly shows that Congress fully expected Lockheed, the nation's largest defense contractor with annual sales approaching \$30 billion, to utilize its significant financial and management resources to rescue Comsat from its financially precarious state.⁴²

The United States, which established Comsat in 1962, in effect sponsored the founding of the INTELSAT and Inmarsat organizations. Under the Communications Satellite Act, Comsat was delegated the responsibility to carry out the policy goal of the US to expeditiously establish "a commercial communications system, as part of an improved global

⁴² In September 1998, when it entered its merger agreement with Lockheed, Comsat was in a troubled financial state as it was faced with increased competition and lowered revenues. In the several years preceding the Lockheed transaction, Comsat had been forced to liquidate all "non core" businesses and sell real estate holdings and other capital assets. It had reduced its quarterly dividend to five cents which it paid from retained earnings. The Lockheed merger was widely seen as having been designed to save Comsat from fast approaching ruin.

communications network, which will be responsive to public needs and national objectives, which will serve the communications needs of the United States and other cultures, and which will contribute to world peace and understanding" (47 USC § 701(a)). In carrying out this statutory objective, Comsat created and organized INTELSAT and Inmarsat. Subsequently, it also assisted in the creation of the INTELSAT spin off private corporation, New Skies, N.V..

Until August 3, 2000, the United States, through Comsat, maintained an ownership interest of approximately 20% of INTELSAT and New Skies, NV and 22% of Inmarsat, thus providing the United States with substantial influence in each organization. In September 2000, without public notice, and apparently without the prior knowledge of the Commission, the Executive or the Congress, Lockheed sold one third of Comsat's interest in Inmarsat to Telenor. This transaction at once significantly reduced the US interest in Inmarsat, and transferred the position as the leading shareholder of that organization to Telenor.

Now, in this proceeding, Comsat is proposing to sell all of the assets, licenses and authorizations of CMC to Telenor. With this transaction, Comsat will exit the L-Band mobile satellite business, a service, which the company developed and engineered from its inception.

In the Approval Application, Comsat offers no explanation or rationale for its decision to sell CMC to Telenor. Certainly, one would presume that this transaction must be part of an overall corporate plan, which Lockheed has developed for Comsat over the last several years dating to September 1998 and before.⁴³ However, no such explanation is offered by Comsat. As noted below, such an explanation is necessary given the policy considerations on which Congress based its passage of the ORBIT Act. Comsat must be expected to address this critical matter in its reply comments.

C. Congress Intended the ORBIT Act to Produce an Expanded Comsat through Lockheed's Investment of Resources

⁴³ It is noted that Lockheed was very familiar with Comsat's operations long before the execution of the merger agreement. The two companies maintained headquarters facilities literally across the street from one another in Bethesda. For two prior years, Lockheed had representatives including its chief financial officer sitting on Comsat's fifteen person board. Thus, it must be presumed that Lockheed was fully knowledgeable concerning Comsat's operations and the need for restructuring to regain a leading position in the marketplace.

Congress worked long and hard in developing the ORBIT legislation to facilitate the privatization of INTELSAT and Inmarsat and, concurrently, provide for the acquisition of Comsat by Lockheed via a merger transaction. The legislation followed a slow and arduous path through Congress, lasting several years and encountering many obstacles. When the necessary changes and compromises were achieved, various members marked this achievement in speeches on the Senate and House floors, which reflected the understandings of the members with regard to the purpose and intent of the ORBIT legislation.

In passing the ORBIT Act, Congress encouraged both the privatization of INTELSAT and Inmarsat and the revitalization of Comsat, a company that, by all accounts, had experienced serious reverses and significant troubles over the last several years. The record before Congress reflected facts that showed Comsat to be experiencing severe financial reverses throughout the last five years. This raised questions as to its continued ability to meet its statutory obligations as the US signatory representative to INTELSAT and Inmarsat.

The general objectives of the Congress in passing the ORBIT Act were summarized by Congressman Billy Tauzin (R-LA), chairman of the Telecommunications, Trade and Consumer Protection Subcommittee, as follows:

Moreover, this compromise legislation will enable the completion of Lockheed Martin's proposed \$2.7 billion dollar acquisition of COMSAT, which will further enhance market competition. I am pleased that the legislation repeals unconditionally upon enactment the current ownership restrictions on COMSAT that have prevented Lockheed Martin from purchasing 100% COMSAT. COMSAT has carried out its job as the U.S. signatory to INTELSAT quite successfully. However, COMSAT's business performance acutely demonstrates that COMSAT must reinvent itself if it is to better react to the ever-evolving marketplace. Because of its inability to swiftly take advantage of new market opportunities, COMSAT, over the years, has experienced a steady decline in market share. This compromise legislation unshackles COMSAT from the antiquated regulatory burdens that have to date hampered its success. This legislation enables Lockheed Martin to complete its acquisition of COMSAT. By fortifying COMSAT, through an infusion of financial and human capital, Lockheed Martin will transform COMSAT into a vibrant commercial company, thereby introducing a new American company in the satellite services marketplace. . Cong. Rec.: March 9, 2000 (House)] [Page H902], emphasis added.

As noted, the House members expected that Lockheed would provide an "infusion of financial and human capital" to assist the rebuilding of Comsat as a leading telecommunications company.

In the Senate, Sen. Conrad Burns, Chairman of the Communications Subcommittee, included the following remarks, which also reflected the understanding and expectation that Lockheed would actively assist in the revitalization of Comsat:

The conference has produced an agreement that will encourage expeditious privatization of INTELSAT and Inmarsat and allow Lockheed Martin to reinvigorate COMSAT as a competitor in the international satellite marketplace. At the end of the day, the conference agreement will lead to enhanced competition in telecommunications services, resulting in real consumer benefits of more choices, lower prices and new services. For this, we should all be very proud. I strongly urge my colleagues to adopt this conference report. Cong. Rec: March 2, 2000 (Senate)] [Page S1155], emphasis added

From these statements, it is quite obvious that the Congress expected that they were amending the Communications Satellite Act to permit the Comsat-Lockheed merger as a way to rescue Comsat from its precarious financial state. What they quite obviously foresaw was Lockheed providing significant resources – financial and otherwise- to shore up Comsat, and allow it to reclaim its former leadership position in the communications satellite industry. What clearly no member could have seen or assumed was a plan by Lockheed to divest Comsat of its assets, which in the view of LRT are in truth national assets.

The Commission must carefully review the instant transaction in light of the referenced Congressional purpose in adopting the ORBIT Act. Comsat must fully explain the reasons behind its proposed sale of CMC. This rationale must take into account the Congressional purpose which looked to Lockheed bringing about an expansion of Comsat as opposed to its contraction which will result should the CMC transaction be completed.

As noted, the Commission must require Comsat to provide the particulars of its business plan, which relate to the instant proposed transaction.

LRT will reserve judgment on this matter until it reviews Comsat's explanation. However, LRT does note its view that the Congressional position favoring a full restoration of Comsat through investment of financial and human resources of Lockheed is quite specific.

In this light, it is hard to determine how a divestiture of one of Comsat's three remaining operating divisions⁴⁴ can be found to be consistent with this stated purpose.

D. Congress Intended the ORBIT Act to Limit the Expansion of Inmarsat and INTELSAT Signatories

Another key question is raised with regard to the sale of CMC to Telenor, a former signatory member of Inmarsat.

In passing the Orbit Act, the Congress set out specific guidelines concerning the participation of the Inmarsat and INELSAT signatory members with respect to future activities of the privatized corporations derived from each treaty organization. Actions undertaken by Comsat which will have the direct effect of increasing the competitive position of Telenor run counter to the announced policy objective of the Congress. This is a matter, which must be reviewed and analyzed seriously by the Commission.

In reviewing the legislative history of the ORBIT Act, the record is found to include a Joint Statement of Primary Original Sponsors of Legislation Committee on Commerce Chairman Tom Bliley (R-VA) and Ranking Democrat of the Telecommunications, Trade and Consumer Protection Subcommittee Edward J. Markey and Representative John Dingell (D-MI), ranking Democrat on the House Commerce Committee, which sets out the following observation:

The policy reasons for section 624 [of the ORBIT act] were that Inmarsat should not be able to expand by repurchasing all or some of, or control, its spin-off, ICO. A primary purpose of the legislation is to dilute the ownership by signatories or former signatories of INTELSAT, Inmarsat and their spin-offs. Cong. Rec.: March 9, 2000 (House)] [Page H902]

The statement reflects the Committee's intention, as a matter of national policy, to dilute the interests of INTELSAT and Inmarsat signatories. In the view of LRT, the proposed sale of CMC to Telenor (and the earlier sale of one third of Comsat's stock interest in Inmarsat to the sale company) does not comply with the stated Congressional objectives with respect to signatory companies such as Telenor.

⁴⁴ Along with CMC. Comsat's basic operational units include that related to the sale of INTELSAT facilities and its

Lockheed's sale of Comsat assets will necessarily increase the competitive position and control of Telenor, an Inmarsat signatory. Indeed, through Telenor's purchase of Comsat's Inmarsat shares, it now owns the dominant share interest in Inmarsat, as Telenor has replaced Comsat as the largest shareholder of the privatized Inmarsat. The proposed sale of the assets of CMC will, based on the presentation set forth in the Approval Application, result in the creation of an expanded, international carrier with facilities ringing the earth. The stock sale transaction and the instant proposed sale of CMC do not comply expressed will of Congress, which seeks to dilute the power and influence of the INTELSAT and Inmarsat signatories.

Here, too, Comsat must be required to present proper argument to support its actions in selling CMC to an Inmarsat signatory. Since this argument has not been presented in the Approval Application, a full explanation should be provided in the reply comments.

E. Comsat Must be Held to the Standards Set Forth in the ORBIT Act

Section 621 of the Orbit Act sets forth the fundamental mandate of Congress defining the Commission's future licensing criteria as follows:

"The President and the Congress shall secure a pro-competitive privatization of INTELSAT and Inmarsat that meets the criteria set forth in this section and sections 622 through 624."

Section 621(2) goes on to define in detail the operative policies with respect to establishing the pro-competitive independence of INTELSAT and Inmarsat privatized corporations as follows:

INDEPENDENCE- The privatized successor entities and separated entities of INTELSAT and Inmarsat shall operate as independent commercial entities, and have a pro-competitive ownership a structure. The successor entities and separated entities of INTELSAT and Inmarsat shall conduct an initial public offering in accordance with paragraph (5) to achieve such independence. Such offering shall substantially dilute the aggregate ownership of such entities by such signatories or former signatories. 47USC 721(2), emphasis added.

international division which operates some dozen small telecommunications companies in as many countries.

The said provision quite clearly reflects the intent of Congress that the interests of former Inmarsat and INTELSAT signatories would be substantially diluted in the future. The actions of Comsat LMGT must comply with this explicit Congressional purpose. Further, in this regard, it follows that Comsat and LMGT cannot be found to undertake any actions, which would directly or indirectly violate the specific directive of Congress. Thus, Comsat and Lockheed should not undertake any action, which would increase the interests of former signatories within INTELSAT and Inmarsat.

LRT has already raised questions concerning LMGT's sale of Comsat's Inmarsat shares to Telenor. On the date of the enactment of the Orbit Act, Telenor's ownership interest in Inmarsat was 6.8%. As a result of the LMGT sale, Telenor increased its Inmarsat interest to 15%. It can be assumed that the expected Inmarsat initial public offering will dilute all existing ownership interests by some 20% or more. Therefore, it can be projected that upon the completion of the Inmarsat ipo, Telenor will have an Inmarsat ownership interest of approximately 12%, nearly twice the interest it possessed upon the passage of the Orbit Act. The actions of LMGT in selling the 8.2% Inmarsat interest to Telenor did not significantly dilute the aggregate ownership interest of this former signatory as directed by Congress, but rather it nearly doubled Telenor's Inmarsat interest.

Now, LMGT has apparently crated an asset sale, which will make Telenor arguably the largest participant in the Inmarsat MSS marketplace. With an expanded base of assets, it is possible that Telenor will grow to be the dominant player in this market. As outlined by the Applicants themselves, the combining of assets of Telenor and CMC will enable the new company to provide "seamless" international service around the globe, maximizing the utilization of their series of earth control stations. Thus, the transaction under review, which will dramatically increase the market position of a signatory company would certainly appear to run counter to the intent of Congress.

Again, LRT remains of an open mind with respect to these key issues. However, Comsat must address these matters specifically to enable all interested parties to determine whether the proposed transaction can be found to comply with the letter of the ORBIT Act and announced policy of the Congress.

Conclusion

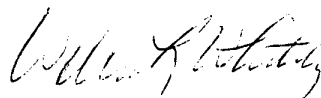
Based on the foregoing, LRT believes that, absent the supplying of facts and information by the Applicants to address the series of points raised, strong reasons exist to support the dismissal of the pending applications. As stated previously, LRT remains of an open mind with respect to all issues it has raised and will look to supplemental information supplied by Applicants to determine its ultimate position with respect to the said applications.

In compliance with Section 25.154 of the Commission's Rules, the undersigned affirms the truthfulness of the foregoing under penalties of perjury.

Respectfully submitted,

Litigation Recovery Trust

By



William L. Whitely
515 Madison Avenue
New York, NY 10022-5403
212-752-5566
212-754-2110
email: litigationrecovtrust@email.com

. June 22, 2001

EXHIBIT A

PROPOSED TELENOR PROTECTIVE ORDERS

DEFINITIONS

For the purposes of these procedures, the following definitions shall apply:

"Telenor" means Telenor ASA and all operating subsidiaries Telenor Satellite Mobile Services Inc., Telenor Satellite Inc. and Telenor Bradband AS

"Comsat" means Comsat Corporation, all of its wholly owned subsidiaries, and any entities controlled by Comsat including Comsat General Corporation .

"Lockheed" means Lockheed Martin Corporation, all of its wholly owned subsidiaries, and any entities controlled by Lockheed. Lockheed includes Lockheed Martin Global Telecommunications Corporation ("LMGT") and

"Compliance Period" means the period of time commencing on the Transaction Closing Date and continuing for a period to be defined by the Commission in the order approving the Comsat-Telenor assignment applications, or until the procedures described herein terminate pursuant to their terms.

"Corporate Compliance Officer" means an employee of Telenor appointed pursuant to the terms hereof who shall be responsible for overseeing Telenor's compliance with these procedures.

"Transaction Closing Date" means the day on which, pursuant to their asset sale agreement, Comsat and Telenor cause an assignment of licenses and authorizations to be executed, acknowledged and filed with the Commission.

"Communications Satellite Act" means the Communications Satellite Act of 1962, as amended, 47 USC § 701, et seq.

"Communications Act" means the Communications Act of 1934, as amended, 47 USC § 151, et seq.

a. CORPORATE COMPLIANCE OFFICER

Telenor shall appoint a Corporate Compliance Officer to oversee Telenor's implementation of and compliance with the Communications Satellite Act and other rules and regulations of the Commission, to monitor Telenor's actions and oversight of Telenor's legal compliance activities, and to consult with the Chief of the International Bureau and other appropriate individuals as the Chief deems necessary on an on-going basis regarding Telenor's compliance activities. The Corporate Compliance Officer shall provide to an independent auditor copies of all documents regarding compliance that Telenor provides to the Commission and consult with the independent auditor regarding Telenor's compliance activities. The audit committee of Telenor's Board of Directors shall oversee the Corporate Compliance Officer's fulfillment of these responsibilities.

The Corporate Compliance Officer shall notify the independent auditor and Chief of the International Bureau immediately on discovering a material failure on the part of Telenor to comply with the Communications Satellite Act and rules and regulations of the Commission.

Not later than 30 days following the Transaction Closing Date, Telenor shall submit to the International Bureau a plan for compliance with these procedures. The compliance plan shall be afforded confidential treatment in accordance with the Commission's normal processes and procedures. A letter providing notice of the filing shall be filed the same day with the Secretary of the Commission.

The Corporate Compliance Officer shall designate Telenor's corporate secretary to attend the Telenor Board of Directors meetings on his or her behalf and to carry out the duties of the Corporate Compliance Officer during such meetings. The Corporate Compliance Officer shall meet with the corporate secretary prior to the Telenor Board of Directors Meetings to ensure that procedures described herein are fully understood, and after the said directors meetings to ensure that the said procedures were adhered to during the meetings.

b. INDEPENDENT AUDITOR

a). Within 30 days of the Merger Closing Date, Telenor shall, at its own expense, engage an independent auditor to conduct an examination resulting in a positive opinion (with any exceptions noted) regarding the compliance of Telenor and Comsat with these procedures during the Compliance Period. The engagement shall be supervised by persons licensed to provide public accounting services and shall be conducted in accordance with the relevant standards of the American Institute of Certified Public Accountants ("AICPA"). The independent auditor shall be acceptable to the Chief of the International Bureau. The independent auditor shall file a report regarding Lockheed's compliance with the procedures described herein every 6 months from the Transaction Closing Date until the end of the Compliance Period.

b). The independent auditor shall have access to books, records, and operations of Telenor and Comsat and key Telenor and Comsat personnel, which are necessary to fulfill the audit requirements of this section. The independent auditor shall notify Telenor Corporate Compliance Officer of any inability to obtain such access.

c). The independent auditor may verify Telenor's and Comsat's compliance with these procedures through contacts with the Commission.

d). The independent auditor shall notify the Corporate Compliance Officer and the Chief of the International Bureau immediately upon discovering a material failure on the part of Telenor or Comsat to comply with any of the procedures described herein.

e). The independent auditor's reports shall include a discussion of the scope of the work conducted, a statement regarding Telenor's and Comsat's compliance or non-compliance with these procedures, and a description of any limitation imposed on the auditor in the course of its review by Comsat or other circumstances that might affect the auditor's opinion. The independent auditor's report shall be made publicly available, except for any confidential material it may include.

f). For 6 months following submission of the final audit report, the Commission shall have access to the working papers and supporting materials of the independent auditor at a location in Washington, D.C. that is selected by Telenor and the independent auditor. Copying of the working papers and supporting materials by the International Bureau shall be allowed but shall be limited to copies required to verify compliance with and to enforce these procedures. Any copies made by the International Bureau shall be returned to Telenor by the International Bureau no later than 12 months after the submission of the final audit report. The International Bureau's review and/or copying of the working papers and supporting materials shall be kept confidential pursuant to the Commission's rules and procedures.

c. ENFORCEMENT

The specific enforcement mechanisms established by these procedures do not abrogate, supersede, limit or otherwise replace the Commission's powers under the Communications Satellite Act and the Communications Act. Compliance or non-compliance with these procedures by Telenor or Comsat does not in itself constitute compliance or non-compliance with any federal, state, or local law or regulation, except the obligation of Telenor and Comsat to comply with these procedures.

a). Penalties During The Compliance Period

1). If the Chief of the International Bureau issues a written determination that during the Compliance Period a failure to comply with one or more of these procedures has occurred, the Bureau Chief may, at his or her discretion, impose penalties as follows:

for the first failure, a forfeiture not to exceed \$100,000; and
for additional failure, forfeitures not to exceed \$250,000 per each such failure

b). If the Chief International Bureau issues a written determination that during the Compliance Period there has been a continuing failure to comply with one of the procedures described herein, then the Chief may, at his or her discretion, impose the penalties described in the previous subparagraph (if such penalties have not previously been imposed for such failures), plus the following additional penalties:

a maximum of \$50,000 per day from the start of such continuing failure (such starting date to be determined by the Chief of the International Bureau);

to the extent that Telenor does not file with the International Bureau within 5 business days of receiving the written determination of a continuing failure a document providing adequate assurance, as determined by the International Bureau, that such continuing failure has been cured, a maximum of \$100,00 per day for each day beyond the 5 day cure period.

b) Penalties At The End Of The Compliance Period

No later than 60 days before the end of the Compliance Period, Telenor shall file a written document with the International Bureau indicating that:

Telenor will come into compliance with the provisions of the Communications Satellite Act or Communications Act and/or regulations issued thereunder by the end of the Compliance Period and describing the method by which it will come into compliance; or

Telenor will not come into compliance with the provisions of the Communications Satellite Act or Communications Act and/or regulations issued thereunder by the end of the Compliance Period. In this event, Telenor will also describe the extent to which Telenor will not be in compliance, identify such steps that, if taken, would bring Telenor into compliance, and submit an Affidavit of Compliance certifying as to the actions to be undertaken by Telenor to come into compliance.

If Telenor will not be in compliance with the provisions of the Communications Satellite Act, the Communications Act and the rules and regulations adopted thereunder at the end of the Compliance Period, then the International Bureau shall have authority to require that by the end of the Compliance Period Telenor will undertake all actions necessary to bring Telenor into compliance with said regulations (such requirement shall become effective at the end of the Compliance Period or within 14 days after Telenor's receipt of a written order from the International Bureau imposing this requirement, whichever is later).

e). In determining the appropriateness and extent of any penalties imposed pursuant to these procedures, the Chief of the International Bureau shall take into account the materiality of the failure to comply with such procedures, and the good faith efforts and reasonable commercial diligence of Comsat in attempting to comply with such procedures. Any determination by the Chief of the

International Bureau pursuant to the procedures described herein is appealable by Telenor to the Commission.

f). Telenor shall strictly obligated to make the payments for failure to comply as required by these procedures, and no showing of a willful violation shall be necessary in order to enforce such payments. Telenor shall not be liable for any payments, however, if the Chief of the International Bureau grants a waiver request filed by Lockheed in which Lockheed will have the burden of proof to demonstrate that the failure to meet a procedure was caused by a force majeure event or an Act of God. If the Chief to the International Bureau refuses to grant a waiver, Telenor may appeal that decision to the Commission.

g). Telenor shall make payments due under these procedures within 10 business days of a determination by the Chief of the International Bureau of the Commission that payment is due. If the Commission has not taken an action to designate or administer a fund in order for Telenor to make payment required under these procedures, Telenor shall make its payment into an interest bearing escrow account pending such action. If Telenor's obligation to make payment is disputed by Telenor, Telenor shall make the disputed payment into an interest bearing escrow account within 10 business days of the date the payment was due. Within 10 business days of making a payment of a disputed amount into escrow, Telenor shall file with the International Bureau a verified statement of the grounds on which payment is not required. Subject to rights of rehearing and appeal, the escrowed payments (including any accrued interest) shall be returned to Telenor or paid to the appropriate fund in accordance with the final and non-appealable Commission or judicial order resolving the dispute.

SUNSET PROVISION

All procedures set out herein shall terminate immediately upon any of the following events.

If an appellate court of competent jurisdiction issues a final and non-appealable decision that the Communications Act, Communications Satellite Act and rules and regulations adopted thereunder are unconstitutional or otherwise unenforceable;

Telenor applies for and receives a grant of authority from the Commission to assign or transfer of the Comsat Mobile Communications licenses and authorizations.

For whatever reason, the Congress repeals the Communication Act and/ or Communications Satellite Act.

CERTIFICATE OF SERVICE

I, William L. Whitely, hereby certify that I have this 22th day of June, 2001 directed that the foregoing PROVISIONAL PETITION TO DENY AND PETITION FOR PROTECTIVE ORDERS via Federal Express or US Mail, postage prepaid to the following:

George Kleinfeld, Esq.
Clifford Chance Rogers & Wells
The William Rogers Building
2001 K Street NW
Washington, DC 20006

Attorney for Telenor

Rosemary Harold, Esq.
Wiley, Rein & Fielding
1776 K Street
Washington, DC 20006

Attorney for Comsat



William L. Whitely