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June 27, 2002

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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JUN 27 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: International Bureau
Re: IB Docket No. 02-87

Dear Ms. Dortch:

Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc. (collectively, "COMSAT") hereby submit this response to the "Supplement to Provisional Petition to Deny" filed by the so-called Litigation Recovery Trust ("LRT") on or about June 23, 2002. COMSAT also responds to the "Proposal for Administrative Dispute Resolution of Issues," filed by LRT on or about June 7, 2002.

COMSAT has noted for the Commission the decision of the Delaware Court of Chancery in April 1998, in which Scott Robb and his associates, William Whitely and William Hallenbeck, were found to have conducted a campaign of harassment against COMSAT. *BelCom v. Robb*, 1998 Del. Ch. LEXIS 58. However, the Delaware Court rendered another decision in that case that is even more instructive in the present circumstances. In that decision, issued on July 15, 1998, the Court denied the following pleadings by the defendant Robb: (1) a motion for reconsideration (including, inevitably, a "supplement" thereto), and (2) an application for an order compelling submission of evidence. The first request was denied because, *inter alia*, it was untimely and was "nothing more than a rehashing of arguments [that the court had] considered and rejected in the past." The second, which sought evidence "regarding fees for work that the defendant allegedly performed for the plaintiff," was denied

... for a simple reason. The underlying claim to which this evidence allegedly relates is the counterclaim that defendant filed in this lawsuit. On March 20, 1997, however, I dismissed defendant's counterclaim. No reason exists for compelling the plaintiff to produce documents relating to a claim that was dismissed over one year ago, in a lawsuit that reached its adjudicatory finale almost three months ago.

I do not know how to be more clear: **this case is over**. This case was tried in December 1997. Both sides to this lawsuit had ample opportunity to conduct discovery before trial. Both sides had ample opportunity to present evidence to the Court during trial. Both sides had a full opportunity to argue the facts and the law at the conclusion of

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the trial. On April 28, 1998, this Court issued its final decision. For this defendant to seek discovery now, almost three years after the lawsuit began, only goes to show the extent to which this particular party is willing to abuse the processes of this Court.

BelCom v. Robb, Del. Ch., C.A. No. 14463, Chandler, C. (July 15, 1998) (emphasis in original).

It is now June 2002 and the Delaware case is still over. Yet LRT continues its abusive “rehashing of arguments [that have been] considered and rejected in the past.” The only new item in LRT’s latest submission is an affidavit purportedly from Eugene Louppov, who with Robb was a co-founder of the original BelCom. One may speculate as to why Mr. Louppov chose to execute this affidavit at this time (assuming he did – COMSAT has not seen a signed copy), but such speculation is not necessary. Robb had an opportunity in 1997 to produce Mr. Louppov and any other documentary and testamentary evidence of his choosing. He produced *nothing* and his claims were *legally extinguished*.

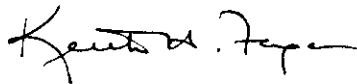
In sum, the Delaware Court’s decision in *BelCom v. Robb* is *res judicata* with respect to the issues that LRT seeks to reopen by submitting the Louppov affidavit. Moreover, these issues are private contractual matters (as the Commission has repeatedly held) and have nothing to do with the Applications currently before the Commission. LRT’s supplement is vexatious and frivolous (as well as untimely) and a clear abuse of process, and should therefore, at a minimum, be stricken from the record of this proceeding. *See, e.g., Public Notice: Commission Taking Tough Measures Against Frivolous Pleadings*, 11 FCC Rcd 3030 (1996) (encouraging all Bureaus and Offices to “fully utilize the Commission’s sanctions powers, which include the authority to strike such pleadings pursuant to 47 C.F.R. § 1.52 or other applicable rules and to issue forfeitures under 47 U.S.C. § 503”).

For similar reasons, the Commission should again reject LRT’s call for “administrative dispute resolution.” The Commission has already considered and rejected almost identical requests from LRT and its “affiliates” on several previous occasions. Specifically, in its 1998 Order addressing a series of complaints regarding COMSAT’s structure and compliance with Commission rules, the FCC rejected a petition by the so-called “BelCom Minority Shareholders Committee” to require the use of arbitration or mediation to resolve disputes between COMSAT and small businesses. The petition contended that arbitration was compelled by Section 721(c)(1) of the Communications Satellite Act, an argument that the agency summarily rejected. (Section 721(c)(1), which was repealed by the ORBIT Act, required COMSAT to consult with the Small Business Administration to implement measures ensuring that small businesses can participate in COMSAT’s competitive bidding procedures.)

In response to the contention that dispute resolution was required under the general public interest standard, the Commission also stated in its 1998 Order that “[a]s a general matter, the Commission does not have authority to resolve or address private contractual matters. Those matters are more appropriately resolved in the courts.” *COMSAT Corporation*, 13 FCC Rcd 2714, 2731 (1998). In this case, of course, these private contractual matters are not only “more appropriately” resolved in the courts – *they have been resolved*, in COMSAT’s favor, in the courts of Delaware. Accordingly, there is nothing for COMSAT and LRT to discuss.

During its appeal of the 1998 Order, LRT renewed its request for negotiations pursuant to the Administrative Dispute Resolution Act (as well as the Negotiated Rulemaking Act). The Commission rejected those requests in a letter from the General Counsel's office dated October 20, 2000. That letter pointed out, *inter alia*, that "even if the use of the Administrative Dispute Resolution Act was an option, that process in these circumstances is one which both yourself and Comsat/Lockheed Martin Corporation would have to agree voluntarily to invoke." Similarly, in the July 2000 *COMSAT/Lockheed Martin Merger Order*, the Commission rejected an LRT request that COMSAT be subject to an alternative dispute resolution process with small businesses, noting that the 1998 Order already had disposed of the issue. *Lockheed Martin Corporation, et al.*, 15 FCC Rcd 22910, 22918-19 & n.51 (2000). The Commission should reach the same result in this case.

Respectfully submitted,



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cc: William L. Whitely, LRT
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