



Wiley Rein & Fielding LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wrf.com

September 9, 2002

Lawrence W. Secret, III
202.719.7074
lsecret@wrf.com

BY HAND DELIVERY

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

Re: Applications for Consent to Assignments, IB Docket No. 02-87

Dear Ms. Dortch:

On behalf of Lockheed Martin Corporation and COMSAT Corporation (collectively "COMSAT") and Intelsat, Ltd. ("Intelsat," together with COMSAT, the "Applicants"), this letter responds to the filing submitted on behalf of WorldCom, Inc. ("WorldCom") and Sprint Communications Company, L.P. ("Sprint") in the above-referenced proceeding on August 23, 2002.¹ The WorldCom/Sprint letter—which essentially repeats the flawed competitive analysis and corresponding calls for extensive merger conditions set forth in their petition to condition grant²—fails to identify any anticompetitive harms or other problems that have any logical nexus to the proposed acquisition by Intelsat of COMSAT World Systems ("CWS").

The WorldCom/Sprint letter is riddled with logical inconsistencies and anomalies that have no relevance to the instant proceeding. At bottom, their real grievance seems to be based on a concern that the merger will enable Intelsat to offer customers lower prices.³ Asserting that completion of the proposed transaction will give Intelsat "unfettered pricing freedom,"⁴ WorldCom/Sprint complain that it will permit the company to "accelerate" its practice of making "substantial savings"

¹ See Letter from Alfred Mamlet, Counsel for Sprint Communications Company, L.P. and WorldCom, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (August 23, 2002) ("WorldCom/Sprint Letter").

² See generally Petition of WorldCom and Sprint to Condition Grant, filed in IB Docket No. 02-87 (May 24, 2002) ("WorldCom/Sprint Petition to Condition Grant").

³ See WorldCom/Sprint Letter at 6 ("[F]or those locations that can be effectively served only by Intelsat, Comsat/Intelsat will price their services to U.S. end user customers in a manner that prevents Sprint and WorldCom from competing with Comsat/Intelsat for those customers").

⁴ WorldCom/Sprint Letter at 7; see also *id.* at 6 ("Intelsat will attain complete pricing freedom.").

Marlene H. Dortch
September 9, 2002
Page 2

available to users.⁵ While this kind of pricing behavior is typical of firms operating in a competitive environment, it is not necessarily what one would expect of entities that have market power, which WorldCom/Sprint assert the combined Intelsat/CWS would wield. In any event, the availability of lower prices for consumers is a development that the Commission presumably would welcome as being in the public interest.

The majority of the WorldCom/Sprint letter is devoted to a restatement of their argument that “U.S. wholesale Intelsat service is a distinct and relevant market or sub-market.”⁶ As the Applicants explained in responding to this argument the first time, the Commission already has settled this issue.⁷ Specifically, the FCC has found that “cable and satellite are fungible technologies” that are part of the same “product market” for the transmission of international switched voice services.⁸ The agency repeatedly has recognized, moreover, that Intelsat faces abundant competition within this appropriately defined market.⁹

⁵ *Id.* at 6 (“Intelsat will undoubtedly accelerate its existing discriminatory practices which currently include promotional pricing to large customers at prices as much as 30 percent below the Intelsat Utilization Charge. Very recently, Intelsat has also instituted another discount program called ‘Intelsat Rewards’ which also offers substantial savings.”); *see also id.* at 7 (“It would . . . make eminent sense for Intelsat to offer favorable private carrier, off-tariff pricing to its embedded base of monopoly foreign carriers in order to persuade them to remain with Intelsat.”).

⁶ *Id.* at 4; *see also* WorldCom/Sprint Petition to Condition Grant at 4.

⁷ *See* Opposition of Lockheed Martin Corporation, *et al.*, and Intelsat, Ltd., *et al.* to Petitions to Deny and Petitions to Condition Grant, filed in IB Docket No. 02-87 (June 7, 2002) at 10-11 (“Intelsat/COMSAT Opposition”).

⁸ *COMSAT Corporation; Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, 13 FCC Rcd. 14083, 14103 (1998) (Order and Notice of Proposed Rulemaking).

⁹ *See* Intelsat/COMSAT Opposition at 11 (*citing Direct Access to the Intelsat System*, 14 FCC Rcd. 15703, 15725 (1999) (Report and Order) (observing that “over 77 U.S. facilities-based carriers operating in the United States” vigorously compete with COMSAT); *Applications of Intelsat LLC; For Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, 15 FCC Rcd. 15460, 15463-64 (2000) (Memorandum Opinion Order and Authorization) (noting that Intelsat “faces competition globally from both . . . satellite systems and fiber optic submarine cable systems”).

Marlene H. Dortch
September 9, 2002
Page 3

The Federal Trade Commission (“FTC”)—which granted the Applicants “early termination” of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act—has confirmed that the merger poses no significant competitive concerns.¹⁰ In any event, as the Applicants previously have explained, there are protections in place to guard against any such behavior. With respect to services offered on the so-called “thin routes” that the Commission has designated as “non-competitive,” the Applicants have clearly stated Intelsat’s intention to abide by the rate restrictions imposed on COMSAT in the *Alternative Rate Regulation Order*.¹¹ In addition, Intelsat already guarantees nondiscriminatory treatment to similarly situated customers pursuant to its Distribution and Wholesale Customer Agreements.¹²

Further, to the extent that WorldCom and Sprint have expressed dissatisfaction with their long-term capacity agreements with CWS, that is not a matter affected in any way by the pending assignment applications. These contractual agreements remain in place (and have binding legal effect) regardless of who holds the authorizations that are the subject of the instant applications.

The WorldCom/Sprint filing also overlooks the fact that, in a competitive market, supply and demand are the ultimate determinates of price. Overall, supply and demand for international satellite communications capacity will be unchanged following completion of the proposed transaction.¹³

¹⁰ See Early Termination Grant Letter from Sandra M. Peay, Senior Contact Representative, Federal Trade Commission, to Bert Rein, Wiley Rein & Fielding LLP (April 5, 2002). Notably, WorldCom and Sprint, while arguing that the Commission should rely on the FTC Merger Guidelines to analyze the market in which Intelsat and COMSAT compete, also inexplicably contend that the FCC should completely ignore the FTC’s decision to grant the Applicants “early termination” of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act. WorldCom/Sprint Letter at 2.

¹¹ See Application of Lockheed Martin Corporation, *et. al.* and Intelsat, Ltd., *et al.* for Consent to Assignments, IB Docket No. 02-87 (filed April 5, 2002) at 31.

¹² See Intelsat/COMSAT Opposition at 25.

¹³ Once the merger is completed, any Intelsat capacity that has not been sold by COMSAT, or that subsequently becomes available as a result of the expiration of existing COMSAT contracts, will pass back to, and be offered by, Intelsat.

Marlene H. Dortch
September 9, 2002
Page 4

Moreover, that WorldCom and Sprint may have limited choices among facilities-based suppliers in foreign markets has nothing to do with the proposed acquisition of CWS by Intelsat. WorldCom/Sprint contend that their problems are largely due to the desire of foreign administrations to “protect their investment stake[s] in Intelsat.”¹⁴ This claim has no legitimate factual basis. With one exception, the foreign entities noted in WorldCom/Sprint’s letter as having exclusionary market access policies have only negligible investment shares in Intelsat.¹⁵ For example, the Intelsat shareholders from Bangladesh and Paraguay have ownership interests of merely .21% and .15% respectively.¹⁶ Likewise, the Ecuadoran telecom entities pointed out by Sprint and WorldCom have ownership shares of only .15% and .07%,¹⁷ and China Telecom holds only a 1.6% percent stake in the company.¹⁸

Indeed, the notion that an investment in Intelsat would distort an entity’s incentives seems disproved by WorldCom itself. WorldCom, by virtue of its voting control of Embratel, ultimately holds a 2.35% ownership stake in Intelsat—a considerably larger position than that of most of the other Intelsat shareholders of which WorldCom/Sprint complain. Given WorldCom’s participation in this proceeding, it apparently feels no compulsion to prioritize its Intelsat investment above other business considerations, and the WorldCom/Sprint letter offers no evidence to indicate that any other Intelsat shareholders would act differently than WorldCom.

¹⁴ See WorldCom/Sprint Letter at 4.

¹⁵ The only possible exception is Videsh Sanchar Nigam Limited, the Indian shareholder, which holds a 5.4% percent interest in Intelsat.

¹⁶ See WorldCom/Sprint Letter at 3. The only shareholder from Bangladesh is the Telegraph & Telephone Board of Bangladesh; the sole shareholder from Paraguay is the Comisión Nacional de Telecomunicaciones (CONATEL).

¹⁷ WorldCom/Sprint Letter at 3. The two Ecuadoran shareholders are Andinatel S.A. and Pacifictel S.A.

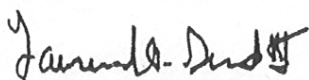
¹⁸ Similarly, Cuba holds a .05% interest in Intelsat; Panama holds a .29% interest; Jamaica holds a .22% interest. See WorldCom/Sprint Letter at 5.

Marlene H. Dortch
September 9, 2002
Page 5

More importantly, each of the countries cited by WorldCom and Sprint is a Member of the World Trade Organization ("WTO").¹⁹ As the Applicants have explained and the Commission well knows, the purpose of the WTO Basic Agreement on Telecommunications ("WTO Agreement") is to open formerly exclusive markets to competition.²⁰ Since each of the countries mentioned allows Intelsat LLC, a U.S. entity, to operate within its market, each is obligated under the "Most Favored Nation" and "National Treatment" provisions to open its market to all other providers from the United States and other WTO countries and to treat those foreign providers no differently than domestic service providers. To the extent that the countries noted by Sprint and WorldCom are not abiding by their obligations under the WTO Agreement, the proper recourse is to pursue a WTO claim with the United States Trade Representative, not through the instant merger proceeding.

For all of the reasons listed above, the Applicants respectfully submit that the FCC should reject this added attempt by WorldCom and Sprint to use the instant proceeding as a forum to gain further advantages in their commercial dealings with Intelsat.

Respectfully submitted,



Lawrence W. Secrest, III
Rosemary C. Harold
Counsel to the Applicants

cc: James L. Ball, Chief, Policy Division, IB
Kathleen Collins, IB
Alexandra Field, IB
Susan O'Connell, IB
H. Richard Juhnke, Sprint Communications Company, L.P.

¹⁹ Specifically, Bangladesh, China, Cuba, Ecuador, India, Jamaica, Panama, and Paraguay are all current WTO Members. Indeed, entities from countries with either WTO Member or Observer status currently hold approximately 97.3 percent of Intelsat shares.

²⁰ See Intelsat/COMSAT Opposition at 6-7.

Wiley Rein & Fielding LLP

Marlene H. Dortch
September 9, 2002
Page 6

Kerry E. Murray, WorldCom, Inc.
Maury Shenk, Counsel to Sprint and WorldCom
Marc C. Rosenblum, AT&T Corp.
Scott H. Lyon, Verestar, Inc.
William L. Whitely, Litigation Recovery Trust