

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554**

In the Matter of

Lockheed Martin Corporation COMSAT
Corporation, and COMSAT Digital
Teleport, Inc. Assignor,

And

Intelsat, Ltd., Intelsat (Bermuda), Ltd.,
Intelsat LLC, and Intelsat USA License Corp.
Assignee

Applications for Assignment of Sections 214
Authorizations and Earth Station Licenses and
Declaratory Ruling Requests

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IB DOCKET NO. 02-87

MOTION TO STRIKE

Litigation Recovery Trust (“LRT”) hereby submits this Motion to Strike as a result of the recent submission of a filing in this proceeding in direct violation of the ex parte rules by Lockheed Martin Global Communications (LMGT), apparently on behalf of Comsat Corporation (“Comsat”) and its parent, Lockheed Martin Corporation (“Lockheed”).

As noted below, LRT has previously filed a series of complaints against Comsat and Lockheed for violations of the ex parte rules. The utter disregard for Commission rules of procedure as exhibited by Comsat and Lockheed, companies which have admitted to filing false information with the Commission¹, should be met with stern sanctions. This is especially the case given the fact that Comsat is a government sponsored enterprise²

¹ See *In re Comsat-Lockheed Merger Proceeding*, Order on Reconsideration, FCC Release 02-197, July 5, 2002. (“Reconsideration Order”) The Comsat/Lockheed rule violation for filing false information with the Commission has been referred to the Enforcement Bureau. Double numbered Fn, 29[second].

² Comsat was established by act of Congress, Communications Satellite Act of 1962, as amended, 47 USC § 701 et seq (“Satellite Act”).

and Lockheed is the country's largest defense contractor. Given their unique status, both companies are expected to conduct their operations in an exemplary manner and observe the highest ethical standards. Comsat, in particular, is required to operate in accordance with the public interest.³ As reflected in this and other LRT pleadings, including that attached hereto, both Comsat and Lockheed have violated federal law and the rules and regulations of the Commission.

Accordingly, LRT is requesting that all submissions of Comsat and Lockheed heretofore submitted in this proceeding be stricken and that additional, and appropriate sanctions be ordered against the said companies.

1. Facts

Several weeks ago in reviewing the Commission's website maintained for IB Docket No. 83-02, LRT noticed that a letter had been filed and posted by a lawyer on the letterhead of LMGT ("LMGT Letter 1"). LRT was confused by this filing owing to the fact that in December, Lockheed announced its decision to leave the telecommunications business and close LMGT⁴. It is LRT's understanding that LMGT has in fact ceased to operate.

Upon discovering the LMGT letter 1, LRT next communicated by email with outside counsel for Lockheed/Comsat and requested that a copy of the said LMGT letter be provided. When no response was forthcoming, three additional follow-up emails were forwarded to counsel⁵. To date, LRT has received no response to its email requests and LRT has not been provided with a copy of the aforesaid LMGT letter 1.

Since LRT has not been served with a copy of the LMGT letter1, which was submitted by a non-party to this proceeding, and, as LRT understands matters, an inactive and possibly non-existent corporation, it considers the filing to constitute an unauthorized ex parte communication. LRT asks that the said Lockheed letter 1 be stricken from this

³ See Satellite Act, 47 USC § 701.

⁴ Lockheed announced its decision to exit telecommunications business on December 7, 2002, including the termination of LMGT and the liquidation of Comsat. See http://www.lockheedmartin.com/news/articles/120701_1.html

⁵ LRT emails were sent in Comsat/Lockheed outside counsel on July 2, 3, 4 and 8.

proceeding. Further, LRT requests that Comsat and Lockheed be cited for this outright violation of the rules.

2. Other Ex Parte Complaints Against Comsat/Lockheed

This is not the first instance where LRT has discovered evidence of ex parte communications by Comsat/Lockheed counsel. In fact, this is the fourth complaint submitted by LRT in response to ex parte violations by Comsat/Lockheed counsel.

In the Lockheed-Comsat Merger Proceeding, LRT has raised issues concerning the filing of improper ex parte communications with the Commission by Comsat. LRT accused Comsat of filing a pleading with the Commission, while failing to provide a copy or notice to LRT.

In their joint response, Comat/Lockheed offered explanations, which initially were regarded by LRT as sharp practice, but when viewed in a larger context, were seen to constitute arrogant and fraudulent conduct directed at LRT and the Commission by the companies.

In responding to LRT's ex parte complaint, Comsat submitted an extensive pleading supported by a Declaration⁶ executed by one Keith Fagen, identified as a "former Associate General Counsel of Comsat" and, at the time of submitting the Declaration, an attorney with LMGT.

Comsat/Lockheed maintained that no violation of the ex parte rules had occurred. In support of this position, the Declaration outlined in great detail, with supporting exhibits, alleged efforts to mail the Comsat filing to LTR at its address at 515 Madison Avenue in New York City, only to find the letter returned by the US Post Office.

The Declaration included as an exhibit a copy of the returned envelope, which carried the stamp: "Returned to Sender, NO SUCH NUMBER." Such a stamp would seem to reflect the fact that the Post Office could not locate 515 Madison Avenue, as "515" was

the only number included in the address on the envelope. But, beyond that, what the Comsat/Lockheed Declaration conveniently neglected to report to the Commission was the fact that since 1992, the Comsat legal department had been sending correspondence to the undersigned and others, including LRT and related entities, at 515 Madison Avenue in New York. Furthermore, the declarant himself for at least a year had been serving pleadings upon LRT and others at the 515 Madison Avenue address.

Comsat/Lockheed proclaimed in their Opposition pleading that Comsat “cannot be faulted when, in good faith, it took reasonable and appropriate steps to cause its letter to be served on LRT at the address LRT provided.” Opposition at pp 9-10, emphasis added.

When the full facts are considered, it is clearly not possible for any reviewer of the facts to conclude that Comsat acted in good faith, either in dealing with the returned envelope, or the submission of its Opposition. Indeed, LRT contends that Comsat (through the actions of its staff attorneys) intentionally violated the ex parte rules. Further, and more to the point, Comsat can be found to have acted in bad faith to deceive the Commission, as it took advantage of an obvious failure/oversight on the part of the Post Office in returning the mail directed to LRT.

Upon receiving the returned document, the Comsat/Lockheed purposely and deliberately decided not to serve LRT with its responsive pleading by re-addressing the envelope and re-sending it to 515 Madison Avenue, even though the Comsat lawyers knew full well that the undersigned and other LRT members did at the time continue to operate offices (as they have for over a decade) at 515 Madison Avenue. In fact, what Comsat did was to carefully file away the pleading with its return envelope, which was then held until it became an exhibit to the Declaration in support of the representation that Comsat/Lockheed had sought *in good faith* to comply with the Commission’s rules and procedures.

These concerted actions, taken together, go beyond a violation of the ex parte rules. They represent further evidence of Comsat/Lockheed’s fraud upon the Commission. The ex parte filing was compounded as Comsat and Lockheed submitted a filing under oath which was false and untruthful, and misrepresented the true facts.

⁶ The Fagen Declaration was included in an Opposition pleading filed by Comsat/Lockheed in the Lockheed-Comsat Merger Proceeding.

3. Additional Ex Parte Filings By Lockheed/Comsat

As referenced above, on July 5, the Commission issued an Order on Reconsideration in the Lockheed-Comsat Merger Proceeding⁷. Upon reviewing the Order, LRT found at footnote 21 a statement confirming that the Commission had received a letter (“LMGT Letter 2”) on October 3, 2001 from a then corporate attorney for LMGT.⁸

The LMGT letter 2, according to the footnote, provided certain information concerning a Comsat subsidiary (Electromagnetic Systems, Inc) that, on July 17, 2002, executed a plea agreement with the U.S. Attorney for the Middle District of Florida, admitting to defrauding the U.S. Defense Department and obstructing justice.

On Friday, July 19, 2002, LRT submitted a Motion for Correction, Clarification and Retraction (“LRT Motion”) in the Lockheed-Comsat Merger Proceeding. In its Motion, LRT informed hat Commission that this LMGT Letter 2, referenced in footnote 21 of the Order, had never been served upon LRT as a party to the proceeding. Such a communication with the Commission is regarded by LRT as a violation of the ex parte rules.

In its Motion, LRT noted that the LMGT Letter 2 was the third violation of ex parte rules by the Lockheed companies raised by LRT in the Lockheed-Comsat Merger Proceeding⁹. LRT has concluded that the continued failure of Comsat/Lockheed to comply with applicable Commission rules has, over time, come to reflect an outright disregard for the Commission’s procedural requirements on the part of Comsat/Lockheed attorneys.¹⁰ LRT requested that this matter be referred immediately to the Enforcement Bureau for appropriate action.

⁷ See footnote 1, supra.

⁸ Letter from Keith H. Fagen, Lockheed Martin Corporation to Secretary, FCC, dated October 3, 2001. This is the same attorney who is the subject of all ex parte complaints herein.

⁹ The Commission has not ruled on LRT’s earlier ex parte complaints against Lockheed/Comsat counsel in the Lockheed-Comsat Merger Proceeding.

¹⁰ See LRT Motion at p. 20.

4. All Lockheed/Comsat Pleadings Should be Stricken

What the Commission is presented with here is a continuing pattern of rule violations by Comsat/Lockheed .¹¹ In the case of the ex parte filings, the actions of Comsat/Lockheed go beyond sharp practice and the clandestine transfer of information. Rather, one finds Comsat/Lockheed attorneys apparently seeing nothing wrong in constructing a Declaration under oath which was in fact an elaborate, deceptive ruse, including multiple exhibits carefully orchestrated to present false information and misrepresent the true facts to the Commission and, in the process, directly violate the ex parte rules.

As a result of Comsat's actions in the Lockheed-Comsat Merger Proceeding, LRT was denied access to the subject responsive pleading, and was therefore prevented from participating fully, as is its legal right, in the subject transfer of license proceeding.

Beyond this, it has been ascertained that Comsat/Lockheed have been cited by the Commission for filing false information in the Lockheed-Comsat Merger Proceeding¹². In addition, the recently submitted LRT Motion (a copy of which is attached as Exhibit A hereto) outlines a series of additional serious rule violations by Comsat/Lockheed in the merger proceeding, including the following:

Comsat/Lockheed, in filing a series of Form 312 satellite station transfer applications and amendments, failed to properly notify the Commission of a pending criminal proceeding involving its Florida subsidiary,

Comsat/Lockheed failed to file a proper amendment under Section 1.65 in a timely fashion to inform the Commission of the execution by Comsat's Florida subsidiary EMS of a criminal plea agreement with the Department of Justice.

Comsat/Lockheed filed a declaration under oath which falsely stated that former Comsat senior management served as officers and directors of the Comsat Florida subsidiary for "administrative purposes" only, which restriction would, if true, constitute a violation of Florida statutes that require directors to exercise full management control over corporations.

¹¹ While the name of a single Comsat/Lockheed attorney continues to surface with respect to the ex parte violations, it must be assumed that the individual involved reports directly to one or more senior Comsat/Lockheed attorneys, who must oversee and monitor his actions. Furthermore, the staff attorney must be found to represent and act on behalf of the managements of both Comsat and Lockheed.

¹² Reconsideration Order, double numbered fn. 29[second]

Comsat/Lockheed filed a declaration under oath which misrepresented the involvement of Comsat senior management in the operation and control of the Comsat Florida subsidiary as confirmed by public record evidence secured from the Office of the Secretary of State of Florida,

LRT requests that, as a result of the companies' repeated violation of the ex parte rules, the Commission enter an order striking all prior pleadings submitted in this proceeding by Comsat and Lockheed.

In addition, as recited in detail in the LRT Motion, the actions of Comsat and Lockheed must be found to constitute a continuing and concerted campaign to misuse, disregard, and violate the Commission's rules and regulation and to defraud the agency. As a result, LRT requests that these matters be referred to the Enforcement Bureau to sanction Comsat and Lockheed, including ordering the disgorgement of all proceeds realized by Lockheed from the liquidation of Comsat and other telecommunications assets, with the proceeds to be paid over to a Digital Conversion Fund to be administered by trustees appointed by the Commission, for the purpose of assisting with the financing, through loans and/or grants, the digital upgrade of transmission facilities of small market, public and minority owned television stations and cable systems.

The Enforcement Bureau should also be directed to determine whether former and / or current senior management and agents of Comsat and Lockheed violated their public trust responsibilities, and, if so, to adopt orders permanently enjoining their participation in the management or representation of companies, which, directly or indirectly, control licenses issued by the Commission, and to order such parties to pay appropriate fines and forfeitures.

Respectfully submitted,

/s/ William L. Whitely

William L. Whitely
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Litigation Recovery Trust
515 Madison Avenue Suite 2306
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July 20, 2002

EXHIBIT A

LRT MOTION FOR CORRECTION, CLARIFICATION AND RETRACTION

AS SUBMITTED TO THE COMMISSION

ON JULY 19, 2002

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	File No. SAT-T/C-20000323-00078
Lockheed Martin Corporation,)	
COMSAT Government Systems, LLC,)	File No. SAT-STA-20000323-00073
And COMSAT Corporation)	
)	
Applications for Transfer of Control of)	
COMSAT Corporation and its Subsidiaries,)	
Licenses of Various Satellite, Earth Station)	
Private Land Mobile Radio and Experimental)	
Licenses and Holders of International)	
Section 214 Authorizations)	

MOTION FOR CORRECTION, CLARIFICATION AND RETRACTION

On July 5, 2002, the Commission issued an Order on Reconsideration (“Order”) in response to a Petition for Reconsideration (“Petition”) filed by Litigation Recovery Trust (“LRT”) in the above-captioned proceeding in which the Commission has authorized the merger of Comsat Corporation (“Comsat”) and Lockheed Martin Corporation (“Lockheed Martin”).¹³ Also before the Commission were additional motions and supplemental pleadings filed by LRT. Lockheed Martin, Lockheed Martin Global Telecommunications, LLC (“LMGT”) and Comsat, collectively referred to as “Lockheed companies,” opposed LRT’s petitions and supplemental pleadings and motions.

1. Summary

LRT views the Order as having been designed, intentionally or unintentionally, to overlook, disregard and in some instances erroneously dismiss evidence of illegality on the part of Comsat and its parent, Lockheed. LRT regards the illegal actions of these companies as more serious than the litany of the recently discovered offenses of Enron, WorldCom, Tyco and other corporate wrongdoers. What makes the illegal and unethical conduct of Comsat and Lockheed so much worse is the fact that Comsat was founded

¹³ The Commission staff faxed a copy of the ruling to LRT on July 9,2002.

by Congress and mandated to operate in the public interest¹⁴. Furthermore, its parent, Lockheed, is the country's largest defense contractor and, as such, is also expected to conduct its business dealings in accordance with the highest ethical and legal standards. Both corporations, as reflected in the Order, LRT's prior submissions and this Motion, have repeatedly violated these ethical standards and federal laws and regulations, and accordingly should be severely sanctioned.

For six years, LRT has sought the intervention of the Commission to sanction illegal conduct on the part of Comsat and later Lockheed. The subject Order is incorrectly summarized at ¶ "2" as a "dismissal " of LRT petitions. In fact, the Order actually constitutes the first ruling by the Commission in response to an LRT petition, which has found Comsat guilty of illegal conduct, i.e. the filing of false information¹⁵. Unfortunately, as outlined below, the Commission in its Order has overlooked, disregarded or erroneously dismissed other evidence of legal violations by both Comsat and Lockheed. Furthermore, the Order contains a number of material errors, including the misstatement of requirements for the reporting of criminal proceedings involving licensees as required under FCC Form 312. This Motion is intended to correct these serious errors and omissions.

In addition, the Order at ¶ 19 includes an unsupported and improper admonition, accusing LRT of misuse of Commission process. This censure is included in the Order, notwithstanding the fact that, as confirmed in the Order, it was LRT's independent research that found Comsat/Lockheed guilty of filing false information with the Commission. The Commission's action in adopting the admonition infringes the Constitutional rights of free speech, petition and due process of LRT members. LRT petitions for the immediate retraction of the ¶ 19 admonition. Further, LRT should be commended for its continuing investigations and research dedicated to public interest objectives concerning statutory and regulatory violations by licensees, including Comsat and Lockheed.

2. Request for Corrections and/or Clarifications

¹⁴ See Communications Satellite Act of 1962, as amended, 47 USC § 701, et seq. ("Satellite Act").

¹⁵ See Order, dual- numbered footnote 29 [second].

This pleading seeks the adoption of necessary and appropriate corrections and clarifications so that the reissued, corrected Order can be submitted by LRT for proper review by the U.S. Court of Appeals. Consequently, expedited action on this Motion is respectfully requested.

A. Order Erroneously Omits Reference to Comsat's Filing Which
Misrepresented its Control of the Florida Subsidiary Which Executed A
Criminal Plea

On July 17, 2000, just days prior to the Commission's approval of the Comsat-Lockheed Merger ("Merger"), Comsat's Florida subsidiary, Electromechanical Systems, Inc. ("EMS") executed a plea agreement with the U.S. Department of Justice, admitting to defrauding the U.S. Navy and obstructing justice.¹⁶ Further, EMS agreed to accept a sentence of probation and remit to the US Government \$7.5 million in restitution. The company was also fined. In its Petition, LRT referenced this criminal plea agreement and a companion Federal False Claim Action¹⁷ brought by the Justice Department against Comsat. Id.

In their joint Opposition, Comsat and Lockheed sought to distance Comsat and its senior executives from the criminal and false claim activities of EMS. As part of this strategy, the Lockheed companies submitted a Declaration executed by a Robert N. Davis, a former Associate General Counsel of Comsat and then counsel to LMGT, which included the following statement provided under oath:

While several employees and officers of Comsat and other Comsat entities also are officers or directors of EMS, this is purely for administrative purposes. None of these individuals is or has been involved in the day-to-day operations of EMS and none of these individuals participated in the EMS activities that led to the plea agreement. Declaration of Robert N. Davis, ¶6, emphasis added ("Davis Declaration").

¹⁶ See Plea Agreement of EMS entered in *USA v. Electromechanical Systems, Inc.*, Criminal No. 8:00-CR-00253 in the US District Court, Middle District of Florida (Tampa Division)) ("*US v. EMS*"). See also, Order ¶ 8.

¹⁷ *United States ex rel. Beattie et al v. Comsat Corporation et al* Case No. (1996CV00966) ("*USA v Comsat*").

The “administrative purposes” defense offered by attorney Davis¹⁸ in September 2000 is quite similar to the excuses offered by directors of Enron, Tyco, WorldCom and other corporate wrongdoers that have recently been raised in Congressional and court testimony. Obviously, the Comsat “administrative purposes” defense is of no legal effect or relevance. Directors and officers of companies are fully responsible for all actions undertaken by the corporations while they are in office. Under applicable state statutes, the legal responsibility and liability of officers and directors cannot be cavalierly explained away with the “administrative purposes” defense or any other such deception.

In fact, the Comsat “administrative purposes” defense for its management of its Florida subsidiary is in direct violation of Florida law, which vests all corporate management power in the board of directors.¹⁹ Florida law requires directors to exercise good faith in managing the affairs of the corporation.²⁰ For Comsat senior executives to have failed to execute their responsibility in managing EMS would have made them personally liable for their actions.²¹

The Order includes no discussion of this blatant admission of illegal conduct by Comsat. The Opposition and Davis Declaration, which establish the direct participation

¹⁸ Mr. Davis at the time of filing the Declaration was a director of EMS and remains one of the two Comsat appointed directors controlling EMS, according to the latest report filed with the Florida Secretary of State, dated April 17, 2001. See <http://ccfcorp.dos.state.fl.us/scripts/cordet.exe>

¹⁹ See State of Florida Code § 607.0801 Requirement for and duties of board of directors.--
(1) Except as provided in s. 607.0732(1), each corporation must have a board of directors.
(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under s. 607.0732.

²⁰ See State of Florida Code; § 607.0830 General standards for directors.--
(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:
(a) In good faith;
(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
(c) In a manner he or she reasonably believes to be in the best interests of the corporation...

²¹ See State of Florida Code; § 607.0830 General standards for directors
(5) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

of Comsat senior officers as officers and directors of EMS, were designed to improperly and illegally limit their involvement in EMS management to “administrative purposes” only. Indeed, there is no reference to the Davis Declaration at all in the Order. Given the serious nature of this illegal conduct, this erroneous omission must be corrected, and a proper and complete discussion of the “administrative purposes” defense must properly be added to the Order.

The Davis Declaration directly links senior Comsat officials to the activities of EMS, a company that pleaded guilty to defrauding the U.S. Government and obstructing justice. For Comsat to have sought to obfuscate, conceal and deny its connection to, responsibility for and authority over EMS by creating the “administrative purposes” subterfuge constitutes an obvious attempt to mislead the Commission and obstruct justice.

In this post-Enron era, the Commission certainly cannot accept a proffered defense by a parent licensee corporation that it failed to exercise proper control over, and to accept full responsibility for, the actions of a licensee subsidiary. This is especially the case where the subsidiary was compelled to execute a criminal plea agreement with the U.S. Justice Department for defrauding the U.S. Government and obstructing justice.

The Order should be corrected to reference the Davis Declaration and to hold Comsat / Lockheed and their senior management responsible for their actions in submitting false and illegal information to the Commission in an effort to avoid full corporate liability for controlling and supervising EMS. The submission of the “administrative purposes’ defense by Comsat/Lockheed must be found to constitute the filing of false information and a fraud upon the Commission. This matter should be referred immediately to the Enforcement Bureau for appropriate action.

B. Order Fails to Reference Public Record Evidence Proving that
Comsat Senior Officials Controlled EMS

At ¶ 12 of the Order, the Commission states its rationale for dismissing, without consideration, four of the five supplements filed by LRT in this proceeding. Each LRT pleading was properly supported with motions to accept the additional comments based

on special circumstances.²² The filings were all the products of LRT's own continuing investigation and research that uncovered additional information relevant to this proceeding.

The Commission concluded that only the LRT supplemental reply of March 24, 2001, that reported that Comsat and submitted false information in denying that EMS had been a Commission licensee "merited its consideration."²³ Aside from that filing, the Commission concluded that "LRT failed adequately to explain why it could not raise in its previous filings, the issues and arguments it poses, and the additional relief it requests in its supplemental replies." Order, ¶12. The Commission also noted that, " LRT attempts to submit information that already is a matter of public record or relates to issues not relevant to this proceeding." Id., emphasis added. The Commission concluded that LRT "has not demonstrated that good cause exists for the Commission to accept its supplemental replies" and denied "LRT's motions for failure to establish good cause to accept the additional filings." Id.

LRT seeks clarification of this ruling to determine whether the Commission has inadvertently or purposely disregarded or dismissed evidence, which directly incriminates Comsat in a continuing conspiracy to mislead and defraud the agency. It is noted that since September 2000, Comsat has consistently failed to refute LRT's public documentary evidence outlined below in any way, although given numerous separate opportunities to do so.

LRT's first Supplement included "public record evidence" secured from the Internet website of the Secretary of State of Florida²⁴. Within days of filing of its Reply, LRT secured a series of documents from the Florida Secretary of State, which related directly to the representations in the Davis Declaration included in the Comsat Opposition. The documentary evidence secured by LRT established that Comsat had

²² See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1970).

²³ Actually, LRT demonstrated that Comsat had filed false information denying that EMS held any Commission licenses. LRT's research of Commission data bases revealed that EMS held a license. See LRT Further Supplement including newly discovered evidence, March 24, 2001.

²⁴ <http://ccfcorp.dos.state.fl.us/index.html>

submitted false information to the Commission concerning its control of EMS, and thereby provided support for LRT's request for a comprehensive investigation of Comsat's representations with respect to the subsidiary.

As noted, the Lockheed companies in their Opposition sought to explain away the past history of EMS wrongdoing reflected in the criminal and related false claim cases²⁵ as the acts of some unsupervised and, one would suppose, renegade corporate entity, far removed from oversight and control by Comsat senior officers. This position was set out in the Davis Declaration.²⁶

Based on the Opposition, one is expected to conclude that these Comsat "administrative" executives, who served as officers and directors of EMS, were completely oblivious to the criminal activities, which were going on all around them. Such a depiction of events simply defies logic. Most importantly, however, detailed evidence provided in the first Supplement secured by LRT from the office of the Florida Secretary of State, without question, confirmed that Comsat/Lockheed had filed false information with the Commission, designed to shield the companies and their officers from liability. The LRT filings demonstrated that it can be proven – directly contrary to Comsat's sworn statements- that Comsat's highest ranking officials directly participated over a period of years in the direct control and operation of EMS.

In its Supplement, LRT provided the Commission with an exhibit (Exhibit 1) presenting a detailed analysis of the management and control of EMS during the period 1996-2000. The information was drawn directly from public documents (the Profit

²⁵ At the time of the filing, Comsat was subject to a civil *qui tam* suit brought by the US Department of Justice under the Federal False Claims Act seeking \$40 million in damages, including treble damages for false claims, overcharges, theft of U.S. Government property and a conspiracy to commit systematic fraud on the government. *USA v Comsat*. Lockheed subsequently settled the action, paying the individual plaintiffs multimillion dollar damages and paying fines to the U.S. Government.

²⁶ The facts set forth in the Opposition and the Davis Declaration represented that, throughout the period 1994 to 2000, EMS operated on its own, independent of the control and supervision of Comsat. During this same period, court filings reflected that EMS continued to defraud the US Navy and others, as it had been doing possibly as early as 1982, and conducted a systematic program to conceal, destroy and alter evidence of this illegal conduct. Under the set of facts as presented by Comsat, its employees served as officers and directors of EMS "purely for administrative purposes."

Corporation Annual Reports (Document # 465846) (herein "PCAR")) filed and executed by or on behalf of EMS with the Florida Department of State for the subject years.

The LRT analysis showed specifically that during the period in question, Comsat maintained strict control of the EMS board, extending from negative control in 1996 to majority control (3 Comsat directors to 2 EMS directors) from 1997 to 2000.²⁷ It is noted that Comsat assumed total control of the EMS Board in December 1998, at just about the same time the US Department of Justice decided to intervene in the *US v COMSAT* qui tam suit and the grand jury was empanelled to commence the criminal proceeding.

In addition, and critical to an analysis of the control of EMS, LTR discovered evidence of the exercise of ultimate control over EMS through Comsat's then president and CEO²⁸. In December of 1998, EMS was controlled by a Board of Directors that consisted totally of three high ranking Comsat officers.²⁹

²⁷ Additionally, based on documents on file with the Florida Secretary of State's Office, LRT discovered that at least for a period in 1998 and 1999, Comsat controlled all EMS director positions (three at that time). The Exhibit 1 analysis provided to the Commission also revealed that key EMS officer positions were held by Comsat executives throughout the critical period in question. Comsat in fact supplied executives who functioned as chief executive, treasurer and secretary of its EMS subsidiary. Also, based on documents filed with the Florida Secretary of State, Warren Y. Zeger, former vice president, general counsel and secretary of Comsat, executed legal filings on behalf of EMS.

²⁸ Beginning in 1998, EMS became a subsidiary of Comsat General Corporation ("Comsat General"), which, in turn, was a wholly owned subsidiary of Comsat. Specifically, LRT secured documents from the Florida Secretary of State which memorialize the vote on December 15, 1998 of Comsat General, the sole shareholder of EMS, as exercised by Comsat president-CEO, Betty C. Alewine. Thus, the Comsat president-CEO was directly involved in the operation of EMS by exercising the control over Comsat as the controlling shareholder of Comsat General and EMS.

²⁹ Documents received from the Florida Secretary of State showed that the EMS Board consisted of three persons: Warren Zeger, Comsat, former vice president, general counsel and secretary, Allen E. Flower, former Comsat vice president and chief financial officer and Christopher J. Leber, former vice president –general manager of Comsat Personal Communications Division. The total domination of the EMS Board of Directors was achieved through the resignation – replacement-removal of all EMS officer-board members. As noted in Exhibit 1, the evidence in the PCAR reports shows a total of five EMS directors (3 Comsat nominees and 2 EMS nominees) in February 1998, 1999 and 2000. The additional evidence of the three man all-Comsat EMS Board in December 1998 raises the question of whether the EMS directors resigned or were removed on any other occasions over the subject period to produce total control by the Comsat directors. Only a full investigation of minute books and other related evidence can answer such questions.

The PCAR reports filed with the State of Florida for the years 1996 through 2000 reflect that Comsat executives served in key officer positions at EMS throughout these years and held sufficient directorships to control all board actions. The following documents were provided to the Commission for inspection:

- Exhibit 2 1996 Profit Corporation Annual Report (Document # 465846)
- Exhibit 4 1997 Profit Corporation Annual Report (Document # 465846)
- Exhibit 5 1998 Profit Corporation Annual Report (Document # 465846)
- Exhibit 6 1999 Profit Corporation Annual Report (Document # 465846)
- Exhibit 7 2000 Uniform Business Report (UBR) (Document # 465846)
- Exhibit 8 Articles of Amendment of Certificate of Incorporation (October 28, 1998) and filing receipt and notice to correct filing
- Exhibit 9 Articles of Amendment of Certificate of Incorporation (December 28, 1998) and filing receipt
- Exhibit 10 Action of Board of Directors in Lieu of Meeting (undated, presumed to be December 15, 1998)
- Exhibit 11 Consent of Stockholder in Lieu of Meeting (December 15, 1998).

Additional documents filed with the Florida Secretary of State reflect the direct involvement of other senior Comsat executives, including its general counsel, with EMS.³⁰

Two documents, a Stockholder Consent executed by Comsat's then CEO³¹ and a companion action of the Board of Directors In Lieu of Meeting, were also located in the Florida public records. This notice established that EMS was operated by a three person board , identified as" all members of the Board of Directors." ³² Thus in December 1998, one month prior to the empanelling of the criminal grand jury addressing EMS criminal charges, the corporation was operated by a board that included only Comsat senior

³⁰ As noted, LRT has secured copies of articles of amendment of the EMS certificate of incorporation as executed by Warren Zeger and filed with the Florida Secretary of State on October 28 and December 28, 1998 (Exhibits 8 and 9). Given Comsat's control over EMS, it would be expected that Mr. Zeger, Comsat's senior law officer, would supervise such legal filings for EMS, even though EMS was a Florida corporation and Mr. Zeger was admitted to the Bar of the District of Columbia.

³¹ The certificate of the sole shareholder was executed by Betty C. Alewine, Comsat's then president and chief executive officer. The certificate in question shows that Comsat's senior executive as the representative of EMS's only shareholder was involved directly in the operations of the Florida subsidiary.

³² The EMS Board of Directors reported in the certificate include Allen C. Flower, Christopher J. Leber and Warren Zeger, three of Comsat's senior executives.

officers, raising questions as to the processes followed by Comsat in managing this company.³³

The documentary evidence presented in the LRT Supplement revealed direct and continuing control of EMS by Comsat and its alter ego, Comsat General Corporation. Throughout the period 1996-2000, all EMS corporate control matters were dominated by senior officers at Comsat headquarters in Bethesda. Based on an analysis of the public record evidence, no matters were left to chance as the Board and all chief executive, treasury and corporate governance issues were controlled by Comsat nominees.³⁴

The Commission must consider the serious issues involved with the submission of the Opposition and the Davis Declaration. In these submissions, Comsat presented a series of factual arguments, supported by a Declaration under oath³⁵, that are directly contradicted by the documentary evidence submitted in the Supplement. However, these public record documents were apparently overlooked and/or dismissed by the Commission as “not relevant” to the matters at issue. Such a dismissal of incriminating public record evidence must be in error.

The evidence submitted in the Supplement, while drawn from public records, was, without question, relevant to the Commission’s review of Comsat’s qualifications as licensee. Apparently, the evidence was purposely or accidentally overlooked, disregarded or dismissed, as it was not addressed in the Order. Therefore, LRT requests the Commission to amend the Order to reflect the LRT public record evidence

³³ Somehow, the EMS Florida based directors reported to the Florida Secretary of State in March 1998 and March 1999 did not hold office in December 1998. This report raises the possibility that the EMS Florida-based directors were only elected for reporting purposes in March of each year and at all other times, Comsat officers held all EMS director positions.

³⁴ In addition, there is documentary evidence that the EMS corporate legal work (i.e. that related to corporate governance and control) was supervised and administered by Warren Zeger, general counsel of Comsat.

³⁵ It is noted that the Declaration was submitted by an attorney who himself is included as an EMS officer-director in the PCAR reports and continued on the Board according to the last filed PCAR report (see fn. 6, *supra.*). The failure to disclose declarant’s direct involvement as a Board member and officer in the Declaration raises a number of very serious questions, including lack of candor and conflict of interest, which should be addressed by the Commission.

from the office of the Florida Secretary of State, which must support the finding that Comsat (as controlled by Lockheed) submitted false and misleading statements under oath concerning the direct and continuing involvement of its former senior executives in the operations of EMS. This matter should be referred immediately to the Enforcement Bureau for appropriate action.

Again, in this post-Enron time, government overseers must be expected to go the extra mile to thoroughly investigate any and all evidence of corporate fraud and corruption. The LRT public record evidence proves that Comsat and Lockheed have filed false information in an effort to mislead the Commission concerning the corporate governance and control of EMS and thereby obstruct justice.

C. The Order Fails to Reference Evidence that Comsat Misled the US Attorney By Misrepresenting the FCC's Review of EMS Criminal Activities

LRT submitted a Second Supplement, which raised additional serious questions related to Comsat's continuing misrepresentations. Specifically, LRT submitted a letter received from Hon. Donna A. Bucella,³⁶ United States Attorney for the Middle District of Florida, located in Tampa Florida. ("US Attorney's Letter")³⁷, concerning Comsat's relation to the EMS criminal litigation.

In the letter, the US Attorney outlined her fundamental assumptions with respect to the Commission's review of Comsat's operations, including those of EMS, in the context of the Lockheed merger proceeding. In particular, the US Attorney's Office clearly assumed that it had been necessary for "representatives of Comsat to explain to the regulator, [the Commission], Comsat's role – if any- in the criminal conduct which is the focus of the EMS plea agreement." U.S. Attorney's letter, emphasis added. The letter

³⁶ As noted in the letter, Ms. Bucella's office was charged with the responsibility of investigating and subsequently entering a Plea Agreement with Comsat's Florida subsidiary, EMS.

³⁷ As reported to the Commission, LRT was in communication with US Attorney Bucella, and Assistant U.S. Attorney Ernest F. Pucello, head of the organized crime task force for the Middle District of Florida, with respect to various issues concerning the EMS prosecution, including the matters which were raised the LRT Petition for Reconsideration, Reply and first Supplement.

went on to note that “[c]ertainly the FCC was entitled to this explanation, in the form of affidavits, before it considered permitting Comsat to merge with Lockheed Martin Corporation.” (emphasis added)

Notwithstanding the position taken by the Justice Department reflected in the US Attorney’s Letter, it is LRT’s understanding, based on the Commission’s Order and pleadings submitted by Comsat and the Lockheed companies in this proceeding, that no such “explanation” in the form of affidavits or any other type of presentation was made to the Commission, concerning Comsat’s control of EMS before the issuance of the non final order approving the merger. Based on the recitation of events set forth in the Order, Comsat first forwarded information concerning the EMS criminal matter to the Commission on August 21, 2000, nearly a month after the vote approving the merger.

The US Attorney’s Letter submitted in the Second Supplement raised additional serious issues of misrepresentation and lack of candor³⁸ on the part of Comsat. Based on the position taken by the US Attorney, it fell to the Commission to inquire whether Comsat/Lockheed or EMS misrepresented to the US Attorney’s Office that information had been presented to, and an inquiry had been conducted by, the Commission concerning the operations and control of EMS by Comsat, prior to the approval of the Comsat-Lockheed merger.

The US Attorney’s Letter sets forth the erroneous understanding that Comsat “no longer exists as a legal, corporate entity.” LRT communicated with the US Attorney to correct this misunderstanding.³⁹ However, here again, inquiry must promptly be made to

³⁸ In the Second Supplement, LRT requested that the Commission notice an evidentiary hearing with respect to the issues raised in the Petition and its supplemental pleadings.

³⁹ LRT has provided the following information to the US Attorney: “On March 17, 2000, Congress passed the Open-Market Reorganization for the Betterment of International Telecommunications Act (the ORBIT Act), which eliminated the ownership restrictions in the Communications Satellite Act that prevented Lockheed Martin from acquiring control of Comsat. Thus, following the merger, by law, Comsat, as an entity, continues as a subsidiary of Lockheed, with its pre-existing rights and subject to its liabilities, including, among other things, the continuing *qui tam* litigation (*United States ex rel. Beattie et al v. Comsat Corporation et al Case No. 1996CV00966*).” Letter of William L. Whitely to US Attorney Donna A. Bucella, Oct. 11, 2000.

determine whether Comsat properly and correctly informed the US Attorney as to the true nature of the merger transaction,⁴⁰ and the continued corporate status of Comsat.

With respect to the dismissal of LRT evidence referenced in the Order, the Bucella letter does not meet the criteria established by the Commission for rejecting evidence contained in the LRT supplements. The U.S. Attorney's Letter, which was a private not a public document, was sent to LRT after the submission of its Reply. LRT had no control over the timing of the letter's receipt. Obviously, its contents, which raise additional most serious issues concerning obstruction of justice and fraud on the part of Comsat (as controlled by Lockheed), are relevant to the present proceeding.

Since the Second Supplement does not meet the criteria established by the Commission for dismissing LRT evidence, it appears that the said submission was erroneously overlooked, rejected or dismissed. LRT requests that the Order be amended to consider fully, and include a complete discussion of, this vital evidence. Also, this matter should be referred immediately to the Enforcement Bureau for appropriate action.

Further, LRT repeats its request that the Commission notice a full investigation and/or evidentiary hearing, including representatives of the US Attorney's Office, Middle District of Florida, to determine the extent to which Comsat's filings with the Department of Justice misrepresented information concerning the Lockheed-Comsat merger and provided false information concerning the Commission's knowledge of EMS criminal activities and whether the conduct of Comsat and Lockheed and their officers constituted obstruction of justice.⁴¹

⁴⁰ For some reason, as yet unclear, the US Attorney's Office came to the conclusion that the Lockheed-Comsat merger resulted in Comsat ceasing to exist as an independent, corporate entity. It is logical to posit that the US Attorney's Office reached its specific position, based on information provided by Comsat. If so, this would involve additional issues of fraud and misrepresentation to another US Government department.

⁴¹ It is noted that based on the positions set forth in the US Attorney's Letter, LRT requested in the Second Supplement that the Department of Justice and the US Attorney's Office for the Middle District of Florida be added as a party to this proceeding. LRT noted that it was critical that the Commission ascertain the information made available to the US Attorney's Office, including, in particular, any representations made by Comsat with respect to this proceeding and the assumptions and underlying understandings of the US Attorney's Office concerning Comsat's control of EMS.

D. Order Includes Incorrect Effective Date of EMS Plea Agreement

The Commission states at ¶ 14 of the Order as follows:

“On August 3, 2000, EMS entered a plea of guilty in the United States District Court for the Middle District of Florida for obstructing federal audits in violation of 18 U.S.C. § 1516.⁴²”

This is a misleading reference to the effective date of the criminal plea. It was on July 17, 2000 that EMS executed the plea agreement with the US Attorney for the Middle District of Florida⁴³. This action confirmed the guilty plea of the Comsat subsidiary, and set in motion the series of steps that followed, culminating in the Court’s entry of the criminal judgment against EMS on November 6, 2000.⁴⁴

The Commission is requested to correct ¶14 to reference the date of July 17, 2000, the date of execution of the criminal plea agreement, as the operative date, fixing the criminal liability of EMS.

E. Order Fails to Reference Comsat’s Violation of Rule 1.65.

Also in ¶ 14, the Commission states that, “On August 21, 2000, Comsat reported the EMS plea agreement to the Commission as part of amendments to the pending Comsat applications.⁴⁵” The Commission should clarify that this action by Comsat came

⁴² *United States v. Electromechanical Systems, Inc.*, M.D. Case No. 8.00-CR-253-T-27A (M.D. Fla. 2000).

⁴³ See *Tampa Tribune*, July 18, 2000 “Largo contractor admits to fraud”, <http://archive.tampatrib.com/>; *Washington Post*, July 25, 2000; Page E4 http://nl12.newsbank.com/nl-search/we/Archives?p_action=list&p_topdoc=11

⁴⁴ *Tampa Tribune*, Nov. 7, 2000. “Company told to pay back government for overbilling”

⁴⁵ Letters to the Secretary, Federal Communications Commission, from Raymond G. Bender (Counsel for Comsat Corporation) accompanying amendments to earth station applications: (1) SES-MOD-19991115-0215700431; (2) SES-LRC-1998021700202 *et seq.*; (3) SES-MOD-2000313-00409 *et seq.*; (4) SES-LRC-19990330 *et seq.* and (5) SES-MOD-19990108-00020, dated August 21, 2000.

more than 30 days following July 17, 2000, the day EMS executed the criminal plea agreement with the Department of Justice,⁴⁶ fixing the company's criminal liability.

The failure of Comsat to file an amendment to its Form 312 applications within the 30 day period required by Rule 1.65 constitutes a direct violation of the Commission's rules⁴⁷. The Order should be amended to register this rule violation on the part of Comsat/Lockheed. This matter should be referred immediately to the Enforcement Bureau for appropriate action.

F. Order Erroneously Fails to Sanction Comsat's Submission of False Information in its Form 312 Satellite Station Transfer Application

In ¶16 the Commission rejects LRT's allegations that Comsat has failed to comply with Commission rules in not reporting the EMS criminal inquiry by stating:

“ Moreover, no application filed in this proceeding by or on behalf of Comsat required such specific disclosure of pending criminal matters prior to conviction. Consequently, we find no justification to grant LRT's request for reconsideration based upon Comsat's failure to disclose the pendency of the criminal investigation involving EMS. Order, ¶ 16, fn omitted, emphasis added.

In support of the above stated position, the Commission includes the following double-numbered footnote 29:

See FCC Form 312, Application for Space and Earth Station Authorizations, requires an applicant or any party directly or indirectly controlling the applicant to inform the Commission of a conviction of a felony in any state or federal court. Order. fn 29 [first]

⁴⁶ There was also another plea agreement in the EMS criminal case executed after August 21, 2000 in which a former EMS executive agreed to cooperate “in the continuing criminal proceedings involving the company.” St. Petersburg *Times*, Aug. 25, 2000, http://www.sptimes.com/News/082500/Business/Business_today.shtml . Apparently, Comsat/Lockheed filed no information with the Commission by way of amendment, attorney's letter or otherwise, concerning this continuing investigation of EMS, constituting an independent rule violation. This matter should be referred to the Enforcement Bureau.

⁴⁷ Comsat and Lockheed maintain that they “voluntarily” filed information concerning the EMS criminal plea agreement. This is erroneous. The fact remains that Comsat, Lockheed and EMS are all licensees and therefore are required to file information concerning criminal convictions, as such directly impact character qualifications. The amended Order should cite this erroneous statement by the companies, and confirm the affirmative obligation of all licensees to file information concerning both pending criminal investigations and convictions.

Although not so identified, the above footnote reference is to question 37 of FCC Form 312. What the Commission erroneously has failed to reference in the Order is the declaration required of Comsat and all applicants under question 39 of Form 312, which reads as follows:

39. Is the applicant, of any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceeding (sic) two items [questions 37 and 38 related to criminal matters and anti-competitive conduct]. If yes, attach as an exhibit an explanation of the circumstances. FCC Form 312, ques. 39, emphasis added.

The Commission's blanket approval of Comsat's failure to report the pending EMS criminal matter as set forth in the Order is in error. Clearly, from the date Comsat and Lockheed first filed applications for the license transfer grants, Comsat was required to include in its multiple Form 312 applications under question 39 a full report concerning the criminal proceeding then pending before the US District Court for the Middle District of Florida, involving its Florida licensee subsidiary. The grand jury was empanelled to address the EMS criminal matters in January 1999, and therefore, Comsat was required under FCC Form 312, question 39, to file full information concerning this pending criminal matter in all of its original transfer applications and any amendments thereto. The Commission's finding that Comsat was not required under any application to file information concerning the pending criminal matter was in error.

The Commission should correct the Order to reflect the true facts. Comsat was obligated to include full information concerning the ongoing EMS criminal proceeding under question 39 to FCC Form 312. It failed to do so in any of its applications, constituting multiple and continuing violations of the rules. The Order should be amended to include these serial violations, which occurred with respect to all Form 312 Applications filed by Comsat and amendments filed by Comsat and Lockheed in this proceeding. This matter should be referred immediately to the Enforcement Bureau for appropriate action.

G. Order Should Be Corrected to Explain Commission's Failure to Refer Comsat Violation to Enforcement Bureau Prior to Expiration of Statute of Limitations

In the second double-numbered footnote 29, the Commission finds Comsat guilty of filing false information with the agency as follows:

We note that Comsat initially represented that EMS was not a Commission licensee. Comsat concedes that it erred in this regard and that EMS has been, since September 1997, the licensee of a station in the Marine Radio Service. The Commission relies heavily on the representations of its licensees and expects all licensees to deal truthfully and accurately with the Commission at all times. Order, fn. 29 [second], emphasis added.

The Commission stated that it found no basis “at this time” to question Comsat’s basic qualifications or to grant LRT’s request for reconsideration because of this “incident.” Id. The Commission did refer the matter to the Enforcement Bureau to determine its non-compliance with Section 1.17 of the Rules. However, the Commission observed that “in light of the fact that the statute of limitations for forfeiture has passed,” such further action would necessarily be of a limited nature. Id.

LRT filed its Petition in August 2000, and its Supplement related to Comsat’s false license false declaration in March 2001. No reason is offered in the Order to explain why the staff delayed nearly 2 years, until July 2002, to draft its response to the LRT Petition. As noted in the ruling, this delay was so long as to extend beyond the statute of limitations for forfeitures, thereby foreclosing, in the Commission’s view, any possibility of subjecting Comsat/Lockheed to appropriate fines. The question naturally arises as to the reasons that occasioned this inordinate delay, including negligence or malfeasance, or possibly a deliberate plan to protect Comsat/Lockheed from forfeiture liability.

The last possibility is raised as the result of disturbing information, which was reported to LRT by an industry lobbyist some months ago, and which, in turn, was previously communicated to the Commission staff. In an earlier letter to the Commission staff, LRT expressed its concern over a report that a Commission staff member had stated that the agency could be expected to delay its ruling on the LRT Petition “indefinitely.”⁴⁸ As LRT stated in its earlier letter and restates now, it is of critical importance to ascertain whether the staff purposely delayed its review of the LRT

⁴⁸ The lobbyist stated that the staff had remarked that it was likely that the Commission would never rule on the LRT Petition.

Petition. This is especially the case in view of the Commission's failure to act prior to the expiration of the statute of limitations as referenced in the Order.

Furthermore, given the fact that the rule violation in question is based on Comsat and Lockheed's filing of false information, it would appear that the statute of limitations should run from the date that the Commission ascertained that the companies had participated in this fraudulent misrepresentation. Acts of fraud generally toll the running of statutes of limitation. The Order should stipulate the facts related to the Commission's determination of the Comsat/Lockheed rule violation, and time estimates it used in computing the applicable statute of limitations related to imposing forfeitures against Comsat/Lockheed.

LRT must also question the manner in which the Commission utilized a footnote in the Order to record its finding of Comsat's liability for filing false information with the Commission. This must be regarded as a highly unusual procedure on the part of the Commission, which practically concealed this serious finding against Comsat/Lockheed.⁴⁹ The Commission was confronted with LRT's evidence that Comsat filed false information, and Comsat's admission of its guilt. Yet, the Commission departed from its usual course in seeking to publicize all of its efforts to enforce the highest standards of veracity on the part of its licensees, by referencing Comsat's admitted rule violation in a footnote.

The procedure of referencing such a serious rule violation in a footnote is seen by LRT as far different from other past actions on the part of the Commission. For example, LRT notes the recent \$3.6 million fine which the Commission imposed against SBC Communications Inc. In that case, SBC did not admit to wrongdoing related to the

⁴⁹ Actually, given the fact that the Comsat sanction was included in a double-numbered footnote, it can be assumed that the ruling was added at the last edit as a way to obscure or hide the anti-Comsat ruling. An obvious effort to avoid press attention to the anti-Comsat ruling was also reflected in the following steps: the ruling was included in a series of three other orders rejecting LRT petitions against Comsat and Lockheed; was issued on Friday afternoon, July 5, in the middle of the July 4th holiday weekend ; and was not addressed in an accompanying Commission press release. These circumstances raise serious issues of favoritism toward Comsat/Lockheed and bias against LRT.

alleged submission of false information in Commission forms.⁵⁰ However, the company was required to pay a sizeable fine and execute an extensive consent decree, resulting in continued monitoring of its future reporting. This action in turn was widely publicized by the Commission.

In the Comsat case, the company- a government sponsored enterprise- fully admitted to filing false information with the Commission in an effort to disguise the licensee status of its subsidiary. LRT discovered the fraud. Yet Comsat was not fined (as the statute of limitations has run) and the referral to the Enforcement Bureau was hidden away in a double numbered footnote. Clearly, a government sponsored enterprise such as Comsat, mandated by law to operate in the public interest⁵¹, should be held to the highest ethical and legal standards. Also, its rule violations should warrant the sternest of rebukes by the supervising agency to set the proper and necessary example for all other private licensees. This has not been the case here. Comsa/Lockheed have been accorded what must be regarded as unusually favorable treatment. A full discussion and explanation of these facts should be included in the Order.

Over the years, in a continuing series of rulings, the Commission has observed that fraud "is a subject area the Commission has traditionally considered to be pertinent to its evaluation of a licensee's character." *Decision*, 13 F.C.C.R. at 15,038. Commission regulations specifically forbid applicants from "mak[ing] any misrepresentation or willful material omission bearing on any matter..." 47 C.F.R. § 1.17; *see also* 47 U.S.C. § 312(a)(1). The Commission has found that a licensee's complete candor is important because "effective regulation is premised upon the agency's ability to depend upon the representations made to it by its licensees." *Leflore Broad. Co. v. Commission*, 636 F.2d 454, 461 (D.C. Cir. 1980); *see also Character Policy*, 5 F.C.C.R. at 3253. Also, it is well recognized that the Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency. *See Swan Creek*

⁵⁰ See FCC Order, 02-153 and press release dated May 28, 2002, http://www.fcc.gov/eb/News_Releases/DOC-222865A1.html

⁵¹ See Satellite Act, 47 USC § 701.

Communications, Inc. v. Commission, 39 F.3d 1217, 1221-24 (D.C. Cir. 1994); *Garden State Broad. Ltd. v. Commission*, 996 F.2d 386, 393-94 (D.C. Cir. 1993).

In the instant case involving Comsat, the Commission is faced with a government sponsored enterprise that has fully admitted that it filed false information in denying that its subsidiary held a Commission license⁵². Also, Lockheed, the country's largest defense contractor and parent of Comsat, joined in the defense of this rule violation by offering the explanation that it is too large an organization to be able to effectively monitor all licenses it may hold at a particular time.⁵³ This conduct is unacceptable on the part of any licensee, but clearly is beyond the pale for a government sponsored enterprise such as Comsat, and the nation's largest defense contractor, both of which are mandated to comply with the highest ethical and legal standards, to take part in such deceptive practices.

LRT requests that the Order be amended to address the reasons why the Commission delayed nearly two years to rule on the LRT Petition, extending beyond the expiration of the statute of limitations for forfeitures. Also, LRT requests that the Commission include an explanation as to the reason why the Comsat/Lockheed outright admission of filing false information was relegated to being included in a footnote and was not reported prominently in the Order as in cases such as SBC, referenced above, where the licensee did not admit to filing false information with the Commission. Finally, the Commission should address the reasons why Comsat and Lockheed are not being held to the highest legal, ethical, public interest standards as an example to the other private sector licensees.⁵⁴

⁵² It should not be overlooked that Comsat's motivation here was to limit the corporation's exposure to liability for failing to report the criminal conduct of a subsidiary holding a communications license. By identifying EMS as a non-licensee, liability could have been avoided by Comsat/Lockheed.

⁵³ See Opposition.

⁵⁴ If Comsat and Lockheed are permitted to file false information and not face severe, widely publicized sanctions, this can only have a detrimental effect on the Commission's continuing efforts to enforce strict rules compliance standards on the part of its licensees.

H. Order Should Be Corrected to Cite Comsat for Filing an Invalid Amendment

Comsat's action in filing its attorney letter "amendment"⁵⁵ on August 21 clearly reflected the fact that Comsat had come to realize- too late as it turned out- its obligation to file full information concerning the EMS criminal proceeding with the Commission. However, based on available information, it appears that the attorney in question was not authorized to file an amendment on behalf of Comsat or Lockheed in substitution for a corporate officer.

Under applicable Commission rules and policies, The amendment should therefore be found to be invalid. The Order should be amended to so state. This matter should be referred immediately to the Enforcement Bureau for appropriate action.

I. Order Should Be Corrected To Remove Reference to Unsigned Pleadings

The Order at footnote 13 includes a statement by the Commission concerning LRT's alleged failures to comply with its rules. The statement is in error.

The Commission states as follows: "LRT has ignored procedural requirements in our rules, including subscription and verification requirements and page limits. Some pleadings filed by LRT are unsigned. See 47 C.F.R. § 1.52 (2001). This statement, based on Comsat's allegations, is erroneous.

LRT did not ignore the Commission's rules. All of LRT's pleadings were properly signed. Conformed copies (unsigned) were forwarded to Comsat/Lockheed, a fact used as the basis of the companies' unsupported allegation against LRT. Furthermore, while LRT pleadings did exceed page limitations, in each and every case, as noted by the

⁵⁵ It is noted that under the Commission's rules (Part 1) and the filing and certification instructions to Form 312, in the case of corporations, amendments to FCC applications are required to be signed by officers. Attorneys can file only where officers are absent and unavailable to execute the amendment. Based on the information included in the Commission's Order, it appears that attorney Bender's letter did not constitute a properly filed amendment. This would constitute separate grounds for rejecting Comsat's proffered filing. This would also constitute an additional rule violation by the companies.

Commission, a proper motion was submitted by LRT seeking rule waivers to admit the pleadings. Thus, in no instance did LRT “ignore” the Commission’s procedural rules.

The erroneous and unsupported reference to LRT’s alleged non-compliance with the Commission rules should be corrected and the said footnote 13 deleted from the Order.

J. Violation of Ex Parte Rules

The Order at footnote 21 states that the Commission received a letter on October 3, 2001 from a then corporate attorney for LMGT.⁵⁶ The letter, according to the footnote, provided certain information concerning EMS. This letter was not served upon LRT as a party to this proceeding. Such a communication with the Commission is regarded by LRT as a violation of the ex parte rules.

Further, it is noted that this was third violation of ex parte rules by the Lockheed companies raised by LRT in this proceeding. To date, the Commission has failed to rule on LRT’s earlier ex parte complaints against Lockheed/Comsat counsel. It appears that counsel’s failure to comply with applicable Commission rules has, over time, come to reflect an outright disregard for the Commission’s procedural requirements on the part of Comsat/Lockheed attorneys.⁵⁷ This matter should be referred immediately to the Enforcement Bureau for appropriate action.

3. LRT’s Requested Corrections and Clarifications Are in the Public Interest

The Commission correctly states that “[w]hile the *Character Policy Statement* is not specifically applicable to Comsat or EMS, the Commission has recognized that prior misconduct can have a material bearing on qualifications for non-broadcast as well as

⁵⁶ Letter from Keith H. Fagen, Lockheed Martin Corporation to Secretary, FCC, dated October 3, 2001.

⁵⁷ Contemporaneously with this filing, LRT is submitting a Motion to Strike in the Lockheed – Intelsat transfer proceeding (IB Docket 02-87), which includes yet another complaint for ex parte violations by Lockheed attorney Fagen.

broadcast licensees and has assessed the relevance of such matters in non-broadcast license cases consistent with the principles set forth in the character policy statement.⁵⁸ “ However, it has concluded that “the EMS matter is not sufficiently compelling to reconsider and either rescind or impose conditions on the Comsat-Lockheed Martin merger.” This conclusion is based solely upon the finding that Comsat filed false information with regard to the EMS license.

This Motion references a number of additional material rule violations by Comsat, including, among others, filing false information with regard to the involvement of its senior management in controlling EMS, its repeated failure to report the pending criminal prosecution in its series of Form 312 applications and amendments; and its failure to timely report the execution of the criminal plea agreement with the Department of Justice. This Motion fully supports a finding by the Commission that this illegal misconduct is sufficiently compelling to reconsider the merger Order and either rescind or impose conditions on the Comsat-Lockheed Martin merger.

The Commission correctly states that its 1990 modification of the policy addresses the relevant non-FCC misconduct that the Commission, at its discretion, may consider in licensing decisions.⁵⁹ Under this policy, the Commission will consider a felony conviction as relevant to a licensee’s character qualifications and an indication of its propensity to obey the law.⁶⁰ The Commission also correctly takes into consideration mitigating factors, such as willfulness, frequency, correctness, and seriousness of the misconduct as well as efforts to remedy the wrong and overall record of compliance with Commission rules and policies.⁶¹

The Commission has initially concluded that while the EMS matter entailed non-FCC misconduct by a company, no other credible information has been provided to detract from Comsat’s record of compliance with FCC rules and policies.¶19. However,

⁵⁸ *In re MCI Telecommunications Corp., Memorandum Opinion and Order*, FCC 99-110, 14 FCC Rcd 11077 (1999).

⁵⁹ *Modified Character Policy Statement* at 3252.

⁶⁰ *Id.*

⁶¹ *Id.*

the matters raised in this Motion, clearly reflect a series of actions on the part of Comsat constituting serious violations of the Commission's rules in an effort to conceal involvement of the company and its officers with EMS and its criminal activities. As shown, nearly two years ago, Comsat set about a pattern of conduct which was designed to conceal the EMS criminal matter, and only the continuing investigation and detailed research of LRT has led to the exposure of this illegal cover-up.

Without question, Comsat was required from the time it originally submitted its Form 312 Transfer Applications to provide the Commission with a detailed report of the then pending EMS criminal proceeding. Subsequently, it was required to file a proper amendment within 30 days of the execution of the criminal plea agreement by EMS. Comsat failed to comply with the applicable Commission rules and regulations. Comsat next embarked on a course of obfuscation and deception, as it (i) filed false information with the Commission, with the purpose to conceal the licensee status of EMS, (ii) created a subterfuge – illegal under Florida law- claiming its management served as officers and directors only for “administrative purposes,” and then (iii) submitted information under oath which falsely denied the direct involvement of senior Comsat officials, including its president-CEO, general counsel and CFO, in controlling EMS.

Further, as discovered through diligent investigation by LRT, Comsat officials misrepresented information concerning the Commission's review of EMS criminal activities to the US Attorney, expanding this web of deception, and further obstructing the proper administration of justice.

Clearly, based on the continuing misconduct of Comsat and Lockheed, the public interest will be served by correcting, clarifying and rescinding and retracting the Order as requested in this Motion. This is especially the case in view of the recent attention directed to corporate fraud and deception by the White House and the Congress, following the Enron and related scandals. All government regulators must be vigilant, and aggressively search out and sanction all illegal conduct and corruption on the part of corporations and their senior officers. This is just such a case.

4. Request For Retraction of Ruling Infringing LRT's Constitutional Rights

In the Order at ¶ 19, the Commission referenced Comsat/Lockheed's claims that LRT and/or its members' primary aim in bringing the instant action is "to harass Comsat and its successors and/or assigns by abusing the Commission's processes in order to cause Comsat and its successors and/or assigns to capitulate to LRT and/or its members' demands for compensation relating to a long ago corporate dispute⁶² involving the LRT members and Comsat." The Commission then undertook the unusual and highly prejudicial action of issuing the following warning:

We hereby expressly warn LRT and/or its members that they may face summary dismissal of their pleadings or the alternative procedure of prior screening of their pleadings should they file abusive or harassing pleadings with the agency. Id.

The findings by the Commission are unfounded, erroneous and highly prejudicial. Indeed, they are based on the representations of two companies that had admitted to filing false information with the Commission. Most importantly, the admonition violates the fundamental Constitutional rights of LRT and its members. Accordingly, LRT petitions for the immediate retraction of ¶ 19 in its entirety.

First and foremost, the LRT filings against Comsat have from the very first had the sole purpose of seeking the intervention of the Commission to sanction illegal conduct on the part of Comsat, and later Lockheed. It is also noted that not all of the actions to which LRT has been a party were commenced by LRT. Indeed, two of the key proceedings – declaratory relief actions involving Comsat's compliance with the Satellite Act- were commenced in 1996 by the Commission on its own motion, following the submission of letters of inquiry by LRT.⁶³ Such Commission actions, a highly unusual circumstance, clearly reflected the staff's judgment that the allegations raised by

⁶² As the Commission has been informed in the Lockheed-Intelsat transfer proceeding (IB Docket No. 02-87), the referenced "corporate dispute" continues. LRT has secured a critical affidavit establishing that the "long ago" Comsat orchestrated law suit was based upon fraud. Actions are being pursued by LRT on the state and federal level to annul prior judgments and sanction those companies and officers and agents responsible for perpetrating the fraud upon the courts.

⁶³ See *In the Matter of Comsat Corporation, et al., Memorandum Opinion and Order*, FCC 97-422, 13 FCC Rcd 2714, 2726 ("Consolidated Order")(1998), *recon. denied*, 15 FCC Rcd 19,516 (2000).

LRT against Comsat were material, substantive and serious. Further, other actions in which LRT has participated were brought by customers and competitors of Comsat.⁶⁴

Indeed, if any party is to be accused of abuse of legal process, it must be Comsat. A review of court records will reveal that over its final ten years, Comsat, often experiencing a cash shortages, regularly misused the courts in order to delay or even avoid paying just bills, break contractual arrangements, intimidate or coerce parties (including its own shareholders) and other improper purposes.⁶⁵

In fact, each and every petition filed by LRT has been based firmly on its conclusions, following diligent research and study, that Comsat and Lockheed were engaged in conduct constituting serious violations of federal law and Commission rules and policies.

For over six years, LRT has sought the Commission's intervention against Comsat and later Lockheed. Over this period, LRT has found that its pleadings have been required to remain on file literally for years before being reviewed and adjudicated by the Commission. Other requests have been summarily rejected by the staff.⁶⁶ Indeed, the very Order at issue relates to a Petition for Reconsideration filed nearly two years ago by LRT. Furthermore, one LRT action, a rule making petition seeking the adoption of a rule to prohibit Comsat⁶⁷ from continuing its open channel distribution of pornographic movies to one million hotel rooms throughout the US, has remained on file before the Commission since December 29, 1995, without any agency action⁶⁸.

⁶⁴ Id.

⁶⁵ Comsat has sued customers (NewsCorp), competitors (PanAmSat, Stratos Communications), business partners (LRT), its shareholders (1997 shareholder proxy action), its officers (action against former president Bruce Crockett) and the Commission. The company in 1999 even threatened to sue the U.S. Congress in the event it passed legislation mandating the renegotiation of its satellite transponder sales agreements.

⁶⁶ Over the last two years, successive requests for subpoenas to access Comsat and Lockheed documents filed by LRT with the Chief of the International Bureau have been summarily rejected.

⁶⁷ Comsat spun off the stock of its entertainment businesses, including the movie distribution business in June 1997.

⁶⁸ Ten days ago, LRT forwarded a letter to Chairman Powell and the other Commissioners requesting that attention be given to LRT's pending hotel movie rule making petition, which seeks

It is true that LRT members have certain commercial disputes with Comsat and Lockheed, but under the circumstances obtaining in this case, this fact should not and cannot be considered by an impartial administrative agency such as the Commission as it reviews the allegations at issue. Absent evidence to the contrary, the motivations of LRT should not and cannot be a relevant factor in the Commission's decision making process, as it reviews the serious allegations of wrongdoing raised against Comsat and Lockheed by LRT. Such motivations, absent proof to the contrary, cannot be cited in support of an ad hoc admonition to forestall the continued exercise of fundamental Constitutional rights by LRT members.

Having said this, LRT is most concerned with the language of the Commission's Order. As an initial matter, one is confronted with the Commission's use of derogatory language in referring to LRT and its members. At ¶ 9, the Commission includes a reference to "LRT and its confederates." This represents a direct attack against the good name, reputation and standing of LRT and its members. This language is patently offensive and, in LRT's view, reflects a clear anti-LRT bias and bent of mind on the part of the Commission.

Furthermore, and of primary concern, we have the entire contents of ¶ 19 to consider. Here, the Commission accepts the baseless and unsupported allegations of Comsat and Lockheed that LRT's actions in seeking the independent intervention of the agency should be found to constitute a misuse of Commission process to harass the companies. The Commission then has included an admonishment of LRT—warning it against the submission of further pleadings. What is truly incredible to LRT is the fact that the Commission voted to undertake this unusual, offensive and damaging action against LRT, notwithstanding the fact that in the very same ruling, it found Comsat guilty of filing false information with the agency in an effort to conceal the licensee status of EMS, and required that the matter be referred for further action to the Enforcement Bureau.⁶⁹ This remedial action against Comsat, a government sponsored licensee, came

a rule requiring that open access to such indecent movies previously distributed by Comsat be restricted through "lock-box" channel selectors so as to protect American children and families.

⁶⁹ The Commission notes in double numbered footnote 29 [second] that the referral to the Enforcement Bureau comes after the statute of limitation has expired. In LRT's view, this represents further evidence of the staff's anti-LRT bent of mind. LRT provided the evidence on

solely as a result of the continuing research of and public interest filings made by LRT and submitted to the Commission.

Clearly for the Commission to find Comsat/Lockheed guilty of filing false information based on LRT's pleadings and then to admonish LRT for harassing the companies as a result of the submission of the same pleadings is illogical, unsupportable, prejudicial and highly improper. Furthermore, and much more to the point, the improper admonishment of LRT by the Commission constitutes a direct and serious infringement of the First Amendment rights of free speech and petition and the right of due process of LRT and its members.

LRT regards this as a very serious matter. LRT has been unjustly accused and improperly judged guilty of misusing Commission process, based on nothing more than the bare, unsupported accusations of Comsat/Lockheed. It must be properly noted that LRT's accusers are confessed corporate felons, former distributors of pornography and, as established in the Order and this Motion, repeated violators of Commission rules and regulations. They have admitted to filing false information with the Commission.

In comparison, for their part, LRT members have been victimized by Comsat/Lockheed executives, who, using their corporate offices, have abused government process and power, stolen property and services, engaged in coercion and intimidation and obstructed justice by concealing and filing false and fraudulent information. This is exactly the type of illegal and unethical conduct and malfeasance by corporate officers, which the White House and the Congress are presently acting to police and eliminate.⁷⁰

which the Comsat rule violation is based over a year ago. However, the staff purposely avoided dealing with the matter until July 1. This action came, according to the Commission, beyond the state of limitations, thereby benefiting Comsat/Lockheed. Such a delay in this instance has obviously denied a just outcome, as it will not be possible to issue a fine or forfeiture order against Comsat/Lockheed, unless the Commission finds, as LRT urges, that the statute of limitations should be tolled as a result of the fraudulent conduct of Comsat/Lockheed.

⁷⁰ Legislation currently pending before the 107th Congress seeks real-time corporate disclosures of corporate information to protect investors; the return of funds to investors who have lost money in the markets as a result of corporate malfeasance; increased criminal penalties for corporate wrongdoing and increased powers for the Securities and Exchange Commission. See Opening Statement of Rep. Michael G. Oxley (R-OH), Chairman House Committee on Financial Services. House-Senate Conference Committee on Corporate Accountability Legislation, July 19, 2002

Furthermore, in unjustly finding LRT has misused government process, the Commission has jeopardized LRT members' proper standing as litigants, and seriously prejudiced their rights to bring actions in other fora, including an appeal of the instant ruling before the U.S. Court of Appeals.

Accordingly, LRT petitions the Commission to retract ¶ 19 in its entirety. Further LRT requests that the language identifying LRT members as "confederates" be excised from the text.. LRT requests that this retraction be undertaken on an expedited basis, so that the language will be removed from the Order before LRT files its Petition for Review with the US Court of Appeals.

Finally, LRT requests that appropriate language be added to the Order properly commending LRT for its continued vigilance and dedication in serving the public interest by searching out and identifying conduct by Comsat and Lockheed and their subsidiaries, which violates federal law and the Commission's rules and policies.

5. Conclusion

LRT requests that the corrections, clarifications and retractions as outlined in this Motion be adopted. In undertaking this review and reassessment of the past actions of Comsat and Lockheed, it is appropriate and in fact necessary for the Commission to take into account the fact that these companies have fully admitted and have been found guilty of submitting false information in this proceeding.

Further, based on this Motion, LRT requests that ¶ 2 of the Order be amended by adding the following language:

The issues addressed by LRT in its pleadings concern the fundamental basis of the Commission's delegated authority to regulate its licensees. The Commission must be able to rely on the basic candor and veracity of its licensees and permittees. This is particularly true in the case of Comsat, which is a government sponsored corporation, founded by Congress and held to a unique public interest standard, and Lockheed, the country's largest defense contractor. We note that Comsat and Lockheed have admitted to filing false information, denying that Comsat's former Florida subsidiary was holder of a communications license. It has also been determined that Comsat/Lockheed, in filing a series of

Form 312 satellite station transfer applications and amendments, failed to properly notify the Commission of a pending criminal proceeding involving its Florida subsidiary, Electromechanical Systems, Inc. ("EMS"). Comsat/Lockheed also failed to file an amendment under Section 1.65 in a timely fashion to inform the Commission of the execution by EMS of a criminal plea agreement with the Department of Justice. We have also found that Comsat/Lockheed filed a declaration under oath which falsely stated that former Comsat senior management served as officers and directors of EMS for "administrative purposes" only, which restriction would, if true, constitute a violation of Florida statutes that require directors to exercise full management control over corporations. Also, based on a review of public record evidence submitted by LRT as secured from the Office of the Secretary of State of Florida, we have determined that Comsat senior management, including its former president-CEO, general counsel and CFO, directly controlled the board of EMS and exercised voting power over EMS. We have also found it necessary to inquire further to determine whether Comsat provided a true and accurate report the U.S. Attorney for the Middle District of Florida, regarding the information it had submitted (or failed to submit) to the Commission concerning the EMS criminal proceeding, prior to our initial vote, approving the Comsat-Lockheed Merger.

Because of these matters, we find reason to question the basic qualifications of Comsat and Lockheed and have referred these matters to the Enforcement Bureau to consider whether there have been violations of the Commission's Rules, including Sections 1.17 and 1.65 and what type(s) of sanctions should be enforced against Comsat and Lockheed, including the forced liquidation of all communications assets of Comsat and Lockheed, with the proceeds to be transferred to a Digital Conversion Fund to be administered by trustees appointed by the Commission, and assist financing, through loans and/or grants, the digital upgrade of transmission facilities of small market, public and minority owned television stations and cable systems. We also find reason to determine whether the members of Comsat and Lockheed former and current senior management and agents violated their public trust, and, if so, we will adopt orders permanently prohibiting their participation in the management of companies, which directly or indirectly control licenses issued by the Commission, and to order appropriate fines and forfeitures.

Respectfully submitted,

/s/ William L. Whitely

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July 19, 2002

CERTIFICATE OF SERVICE

I, William L. Whitely, hereby certify that I have this 20th day of July, 2002 directed that the foregoing MOTION TO STRIKE be forwarded via Email, Federal Express or US Mail, postage prepaid, to the following:

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