**Before the**

# Federal Communications Commission

**Washington, D. C. 20554**

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| **In the Matter of** | } | |
| | } | |
| **Lockheed Martin Corporation COMSAT** | } | |
| **Corporation, and COMSAT Digital** | } | **IB DOCKET NO. 02-87** |
| **Teleport, Inc. ,Assignor,** | } | |
| | } | |
| **And** | } | |
| | } | |
| **Intelsat, Ltd., Intelsat (Bermuda), Ltd.,** | } | |
| **Intelsat LLC, and Intelsat USA License Corp.** | } | |
| **Assignee** | } | |
| **And Telenor Satellite Inc., Assignee** | } | |
| | } | |
| **Applications for Assignment of Sections 214** | } | |
| **Authorizations and Earth Station Licenses and** | } | |
| **Declaratory Ruling Requests** | } | |

## PROVISIONAL PETITION TO DENY

**Litigation Recovery Trust ("Petitioner" or "LRT"), on behalf of its members and its associated entities[1], hereby submits the instant Provisional Petition to Deny including**

[1] **Litigation Recovery Trust represents the rights and claims of the following members: William L. Whitely, Scott H. Robb, John T. Whitely and William J. Hallenbeck and includes the following entities: Committee to Restructure the International Satellite Organizations ("CRISO") and BelCom Minority Shareholders and Claimants Committee ("BelCom Committee"). Certain of the LRT members, commencing in 1993, became business partners with Comsat in the operation of a communications company (BelCom, Inc. ("BelCom")) in the former Soviet Union. Beginning in late 1995, the LRT members became involved in a business dispute with Comsat over the operation of BelCom. Comsat seized the corporation in mid 1995, in direct violation of the company's shareholders agreement, charter, by-laws, and Delaware law. Comsat continued to operate BelCom at a loss until December 2001, when its assets were sold by Lockheed. In 1995, Comsat caused BelCom to bring legal action against one of the LRT members, and subsequently prevailed before the Delaware Chancery Court. In past pleadings by Comsat and Lockheed in the LRT Reconsideration and other proceedings, attorneys for these parties have included personal attacks against one or more LRT members. These attacks were based in part on the Delaware litigation. On May 20, 2002, LRT obtained the necessary affidavit and associated agreements from a successor in interest to BelCom, which support findings that the entire litigation brought in the past by Comsat against LRT and its members was premised on fraud and misrepresentation. LRT will be proceeding immediately with the filing of necessary federal and state actions to rescind, revoke and/or annul all prior rulings secured by Comsat/Lockheed and to seek appropriate compensatory and punitive damages against the companies and their agents. In view of the fact that Comsat/Lockheed has premised its attacks against LRT on the Delaware decision and associated orders, LRT will keep the staff informed concerning the supplementary actions undertaken to rescind, revoke and/or annul these earlier rulings..**

**Based on various grounds (some of which are referenced below), LRT member William L. Whitely is**

**Request for Protective Orders. Previously, Petitioner submitted a Petition for Additional Issue for Review ("LRT Reconsideration Petition") in the Commission's current reconsideration proceeding related to the merger of Comsat Corporation ("Comsat"), a District of Columbia corporation, and Lockheed Martin Corporation ("Lockheed"), a Maryland corporation (File Nos. SAT-T/C-20000323-00078, *et al*). [2]The said LRT Reconsideration Petition referenced a number of issues related to the sale of Comsat assets by Lockheed. As outlined below, certain of the issues raised in the Review Petition are related to the issues under consideration in the current proceeding.**

**The instant pleading is submitted with reference to the recent filing of the above-referenced Application for Consent to Assignments ("Application") submitted to the Commission in the above referenced docket by Lockheed, Comsat and Comsat Digital Teleport, Inc. (collectively "Comsat" or "Assignor"), together with Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp. (collectively "Intelsat" or "Assignee") (jointly "Applicants").**

## 1. Introduction

**In issuing its public notice related to the above submission, the International Bureau has taken the position that the Application has been found, upon initial review, to be acceptable for filing. The Commission, however, has reserved the right to return the Application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies.**

**The Commission's finding notwithstanding, upon its examination of the Application, LRT has found it to be defective and not in conformance with the Commission's rules and policies. It should be withdrawn by the parties or dismissed by the Commission as defective.**

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**currently moving for dismissal and revocation of the Chancery Court decision. Additionally, LRT members in December 2000 filed suit against Comsat and Lockheed in the United States District Court for the Southern District of New York (WL Whitely, et al v. Comsat, et al, Case No. 00 CIV. 9401 ) for a series of causes of action including contract breach, coercion and violation of Constitutional rights.**

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

**As outlined below, the Application misrepresents (i.e. fails to disclose) the current status of the Lockheed/Comsat licenses, and further fails to disclose information critical to assessing the qualifications of Lockheed and Comsat to continue as Commission licensees. The failure to make these requisite disclosures affects not only the licensee qualifications of Lockheed and Comsat, but also the status of joint applicant Intelsat, both before the Commission, as well as the Securities and Exchange Commission (SEC), where it has filed a preliminary prospectus under Form F-1 (Notice of Election to Register Securities) SEC File Number: 333-87064**

**In view of the seriousness off the instant situation, LRT earlier this week was in communication with the Applicants to provide them the opportunity to voluntarily withdraw their joint Application immediately. Under this procedure, they would be able to have the option, if they so chose, to revise and resubmit the filing, containing full, complete and proper disclosures of all relevant information, including current license status. In the alternative, Applicants were given to the close of business on Wednesday , May 22 to withdraw the Application. They took no such action. Accordingly, this pleading is being submitted by LRT.**

## 2. Failure to Disclose Pending Commission Proceedings and Licensee Disqualification Issues

**At page 14 of the Application, the Applicants represent that the transaction in question is consistent with the "public interest, convenience and necessity." The parties also make the following representations:**

1. **"Comsat holds various Commission licenses and authorizations that will be assigned to Intelsat upon the completion of the proposed transaction."**
2. **"Intelsat LLC and Intelsat USA possess all requisite legal qualifications to hold Commission licenses and authorizations.**
3. **"The transaction…does not violate any applicable statutory or regulatory provision.**
4. **"…a grant of these applications would pose no impediments to Commission enforcement of the Communications Act or any of its goals underlying relevant statutes" Application, pp 11, 14-15**

**These representations are untrue and are viewed by LRT as constituting an effort to conceal basic and vital facts from the Commission staff and, most importantly, from all**

**parties – competitors, customers, public interest groups and governmental institutions- that may be interested in, and/or may be directly or indirectly affected by, the proposed transaction.**

**Stated simply, Lockheed does not possess a final grant of authority to the Comsat licenses, which it is seeking to assign to Intelsat. Furthermore, in the context of a reconsideration proceeding brought by LRT, a series of disqualification issues have been raised against Lockheed, including, but not limited to, fraud, misrepresentation, failure to disclose and violation of public interest standards, directly impacting the right of Lockheed to continue as a licensee, as well as its associated right to assign its licenses to Intelsat.**

## 3. LRT Reconsideration Proceeding

**Lockheed originally sought the authorization of the Commission to receive the transfer of the subject licenses through its merger with Comsat.[3] While the Commission initially approved the merger (*In re Comsat Corporation*, 14 FCC Rcd 2714 (1998)), LRT sought reconsideration of the merger order. This proceeding ("LRT Reconsideration") remains pending, as recently confirmed to LRT by the staff of the International Bureau. Consequently, the Comsat-Lockheed Merger Order remains "non final."**

**The issues raised in the LRT Reconsideration[4] are quite serious. In its series of filings, LRT has established that:**

1. **Comsat's former Florida subsidiary (Electromechanical Systems Inc. ("EMS")) on July 17, 2000 entered a plea agreement with the US Attorney for the Middle District of Florida, admitting that it had defrauded the US Department of Defense and US Navy and obstructed justice in selling communications equipment for use on Navy ships. The Comsat company was fined and ordered to pay nearly $10 million in restitution and was placed on probation for five years. This information was not revealed to the Commission prior to its initial grant approving the Lockheed-Comsat merger on July 27, 2000. (See *USA v. Electromechanical Systems, Inc.*,**

**[3] COMMISSION File No. SAT-T/C-20000323-00078 ; File No. SAT-T/C-20000323-00073 ("Comsat Merger Proceeding")**

**[4] These and other issues have also been raised in other proceedings including the Lockheed ,Ka Band License Proceeding, File No. 39-SAT-P/LA-98 ("Ka Proceeding") and the Comsat-Telenor Assignment Proceeding File No. SES- ASG-20010504 -00896 ("Telenor Proceeding").**

**Criminal No. 8:00-CR-00253 ( US District Court, Middle District of Florida (Tampa Division) (“*USA v. EMS”).***

2. **Contrary to the Comsat/Lockheed representations, LRT has established through the submission of documentary evidence secured through the Secretary of State of Florida that senior management of Comsat exercised control over the Comsat Florida subsidiary, raising serious issues of liability.**

3. **Lockheed/Comsat have admitted to filing false information with the Commission, misrepresenting the licensee status of the Comsat Florida subsidiary.**

4. **Lockheed/Comsat failed to inform the Commission that Comsat was made the subject of a Federal False Claim action related to the actions of its Florida subsidiary, involving fraud, misrepresentation, intimidation and coercion related to the company’s involvement in defrauding the Defense Department and Navy and illegally discharging company employees who sought to report the illegal activity to authorities. This litigation was ultimately settled by Lockheed through payment of substantial damages to the plaintiffs. *(United States ex rel. Beattie et al v. Comsat Corporation et al Case No.* (1996CV00966) (“*USA v Comsat”*).)**

5. **In an another license proceeding, (the Ka Proceeding ) Lockheed failed to disclose any information concerning the disqualification issues before the Commission in the LRT Reconsideration proceeding.**

6. **In its filing in the Ka Band License Proceeding, LRT revealed that Lockheed has also been made the subject of another Federal False Claim action prosecuted by the Department of Justice, based on allegations of defrauding the US Air Force in connection with the sale of communications equipment. The amount of the fraud is estimated in excess of $40 million.**

**The Applicants have failed to present any information concerning the serious matters raised in the context of the LRT Reconsideration and other pending proceedings, involving serious character qualification issues filed against Lockheed and Comsat, including fraud, misrepresentation, affirmative failure to disclose, abuse and misuse of power and repeated and continuing violation of disclosure rules.**

## 4. Character Qualification Issues

**As the instant Application does not reference in any way the LRT Reconsideration or other pending proceedings and the character issues to which they give rise, it is clear that Lockheed has failed to provide this relevant and critical information concerning licensee conduct, as required under applicable Commission rules and regulations.**

**The Commission maintains a longstanding policy for administering character qualification issues raised with respect to license applications. Violations of the Communications Act, the Communications Satellite Act or the Commission's rules and regulations can be found to raise character concerns with respect to broadcast and non broadcast license applications, including providing the basis for disqualification of an applicant. See *Virginia RSA 6 Cellular Ltd. Partnership*, 6 FCC Rcd 405, 407 (1991) (*citing Policy Regarding Character Qualifications in Broadcast Licensing*, 102 Commission 2d 1179, 1210 ("Policy Statement") (subsequent history omitted)).**

**A conviction for fraudulent conduct and obstruction of justice occurring over an extended period of time as clearly involved in the Comsat EMS case, and related efforts to conceal this activity from the Commission as reflected in the LRT Reconsideration proceeding, the Comsat-Lockheed merger and other proceedings, plainly calls into question Lockheed's ability to act in a manner consonant with Commission regulations. A finding that Lockheed is not qualified to continue as a licensee or should be made subject to sanctions would likely terminate or severely limit its right to assign or transfer its licenses to a third party such as Intelsat.**

**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.**

**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 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).**

**Lockheed, and Comsat before it, have exhibited a continuing pattern of behavior involving misrepresentation of critical information and affirmative failure to disclose information directly related to licensee qualification and rules compliance issues. Full**

**information concerning these serious matters must be included in the joint Application. The Applicants' failure to include this information must be found to constitute grounds for the immediate dismissal of the said Application and related filings.**

## 5. Lockheed/Comsat Violations of Commission Rules and Regulations

**In the Comsat Merger Proceeding, serious wrongdoing has been admitted by the parties, and substantial and material questions of fact have now been raised regarding the basic character qualifications of Lockheed and Comsat.**

**For example, it has been established in the Criminal Plea Agreement in *USA v. EMS* and has been further alleged in *USA v. Comsat,* that Comsat, for over five years, directed and operated a subsidiary engaged in fraud in providing communications equipment and services to the US Navy, and pleaded guilty to repeated violations of 18 USC § 1516. Comsat was also made subject to civil charges brought by the US Department of Justice in *USA v. Comsat,* a Federal False Claim action for defrauding the US Navy and obstructing justice, through the destruction of evidence and submission of false data in connection with a federal audit and intimidating and coercing employees. Evidence submitted to the Commission clearly establishes that senior Comsat management personnel were directly involved in the operation and control of the Florida company.**

**The further evidence shows that Lockheed and Comsat have systematically followed a course of action involving the deliberate failure to disclose information or to misrepresent material acts concerning the status of the *USA v. EMS* and *USA v. Comsat* proceedings in connection with their various communications service applications, and the Comsat Merger transfer application and reports filed with the Commission. These actions by Lockheed and Comsat have involved direct and continuing violations of the Commission's rules and regulations, including, in particular, 47 CFR § 1.65.**

**The record clearly confirms that Comsat has in the past not dealt truthfully with the Commission (e.g. the company has admitted filing false information with the Commission) and other agencies of the federal government, including the Department of Defense, the Defense Contract Audit Agency and the US Navy Department, and has failed comply with the Communications Act, the Communications Satellite Act , the**

**Commission's rules and policies, the US Criminal Code and other federal laws. The record also establishes that Lockheed has, since October 1998, been a party to this continuing deception and dissembling in connection with the prosecution of the Ka-band system application.**

**It is observed that the Commission has recognized that prior misconduct can have a material bearing on qualifications for non- broadcast, as well as broadcast licensees, and it has assessed the relevance of such matters in non-broadcast license cases consistently based on the principles set forth in the Broadcast Character Policy Statement. *see MCI Telecommunications Corporation For Authority to Construct, Launch and) File No. 73-SAT-P/L-96 Operate a Direct Broadcasting Satellite System at 110 W.L. Memorandum Opinion and Order* , released: May 19, 1999 ("*MCI Order*").**

**It has also been established that the criminal and civil violations of a non licensee parent[5] or subsidiary corporation can be found to create disqualifying conditions for the licensee.[6] Lockheed's continuing failure to notify the Commission concerning the details of the criminal investigation in *USA v. EMS* and the charges of fraud, misrepresentation and obstruction in *USA v. Comsat* in the context of the Merger Order, LRT Reconsideration, Telenor Proceeding and Ka band Application, must be found to directly impact Lockheed's status as licensee. Furthermore, only after issues of licensee qualification can be determined in its favor, can Lockheed's application for the right to assign the subject licenses to Intelsat be entertained by the Commission.**

**Lockheed willingly entered into the Comsat Merger transaction paying some $2.6 billion to acquire the assets and business of Comsat to serve for what it described as the foundation for its newly organized, but poorly performing, worldwide telecommunications enterprise[7]. On completing the Comsat Merger (before securing a final order from the Commission), Lockheed assumed full and complete responsibility for**

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**[5] Lockheed is in the process of becoming a licensee. The joint Application states that Lockheed is a party to a pro forma transfer of control application of all Comsat General Corporation licenses. The Applicants have assumed the responsibility for notifying the Commission staff processing the Application when the pro forma transfer is granted. Application, fn. 5.**

**[6] See *MCI Order* In a case involving the subscription DBS application of Tempo Satellite, Inc., for instance, the Commission held that antitrust and tort convictions entered against the applicant's parent corporation in a civil lawsuit raised prima facie questions regarding the applicant's character qualifications.**

**[7] As discussed below, there is a contrary theory that, judging from its subsequent actions, Lockheed never had the intention to operate Comsat, but rather acquired it as part of and overall plan to close Comsat through an initial purchase by Lockheed, retiring the interest of Comsat's 38,00 shareholders, and a later, systematic liquidation of Comsat,**

**directing and controlling Comsat. However, Lockheed's transfer application to acquire the Comsat licenses has yet to become final. Therefore, before the present Application can be reviewed, Lockheed's qualifications to receive the grant of the Comsat licenses must be fully and finally adjudicated.**

## 6. Failure To Disclose License Qualification Information Impacts the Commission and All Potential Interested Parties

**Lockheed has clearly participated in the filing of a defective application. Evidence submitted by LRT in its Reconsideration proceeding reflects the full participation of Lockheed in filing false and misleading information with the Commission, in an effort to avoid liability for the past illegal actions of Comsat, including the criminal activities of its EMS subsidiary. Further, Lockheed has admitted to filing misleading information with the Commission in the LRT Proceeding by falsely representing EMS as a non licensee, in an effort to avoid liability for the action of the Comsat subsidiary (obstruction, destruction and falsification of evidence, intimidation and coercion). Lockheed also failed to file any information concerning Comsat and EMS in connection with the Ka-band license application. None of this information has been referenced in the Application.**

**This deliberate and continuing concealment of information as reflected in the pending Application directly impacts the Commission's ability to properly review the Application. It cannot be presumed that the Commission staff has full knowledge of the LRT Reconsideration and other proceedings involving the parties. Indeed, the Applicants have undertaken to supply the "Commission staff reviewing this application" information concerning at least one other related proceeding involving Lockheed that is pending before the agency. [8] The Applicants cannot therefore argue that the staff has available to it full information concerning the license disqualification issues involving Comsat and Lockheed.**

**Furthermore, and most importantly, the concealment of vital licensee qualification information affecting the Applicants directly affects all parties – competitors, customers,**

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**an action which commenced within 30 days of closing the transaction.**

**[8] Application, fn. 5.**

**public interest groups and governmental organizations - seeking to review, comment upon or possibly oppose the proposed Lockheed-Intelsat transaction.**

**As all parties and legal practitioners participating in Commission proceedings fully recognize, the disclosure requirements have been established by the Commission to assure that applicants provide all relevant and current information for review by the Commission staff and the other parties participating in individual proceedings.**

**Lockheed and Intelsat must clearly expect that the subject Applications will be reviewed by, and quite possibly contested by, a number of other parties[9]. The failure of Lockheed and Intelsat to amend their joint applications to include information directly related to Lockheed/Comsat character qualifications will foreclose all potential contesting parties from having a full and informed opportunity to raise objections concerning Lockheed's and Comsat's unfitness to receive the subject license grants and to be granted full and final authority to assign them to Intelsat.**

**In the final analysis, the rules are the rules, even for large[10] and powerful companies such as Comsat and Lockheed. Disclosure of all material matters affecting licensee character qualifications is critical to the proper review and evaluation of applications by the Commission and all interested parties. Lockheed's intentional failures to comply with these regulations can properly be deemed to constitute separate grounds for sanctions, including license revocation. Such behavior on the part of a licensee (or potential licensee) is unacceptable, and can be seen as representative of the conduct of Lockheed and Comsat, involving their continued fundamental failure to comply with the Commission's rules, regulations and policies. Such failures are especially troubling in the case of Lockheed (the country's largest defense contractor) and Comsat (a government sponsored corporation, originally founded by Congress).**

## 7. Issues Concerning Future Actions With Respect to Intelsat Stock

**[9] LRT understands that the parties had a pre-filing meeting with Commission staff during which the parties were asked if they expected any counter filings to their Application. The parties reportedly answered that it was expected that LRT would file against the transaction.**

**[10] In the LRT Reconsideration Proceeding, while admitting that it had filed false information concerning the licensee status of Comsat's Florida subsidiary, Lockheed sought to excuse its conduct by claiming that its operations were too large to be able to accurately monitor all licensee activities. Such an explanation of bigness equating to carelessness or incompetence cannot be accepted by this or any other licensee.**

**In the joint Application, the parties state that "Lockheed Martin holds approximately 24.05 percent of the total Intelsat, LTD. shares through Comsat Corporation and related Comsat business entities." Application, p.9. The Applicants provide further information on this point:**

> **Lockheed Martin's decision to exit the business of providing global commercial telecommunications services has not affected its investment interest in Intelsat; in fact, Lockheed Martin's ownership share in Intelsat has increased slightly since the Commission issued the Intelsat Licensing Order (15 FCC Rcd. At 15480) in August 2000. Application, fn 11.**

**The implication of the above representations is obviously that Lockheed is and intends to remain a majority holder of Intelsat stock. In fact, as noted above, the Application gives the impression that Lockheed is increasing its share interest. However, there is other information available, which raises questions concerning this representation.**

**A recent wire press story carried by Reuters on April 29, stated that "Intelsat's stockholders also plan to participate in the IPO," and adding that "the company will not receive any proceeds from the sales of those shares." [11] No information was included in the Reuters story identifying the selling Intelsat founding shareholders. Specifically, it was not stated whether Lockheed would be included in this group of shareholders disposing of their interests.**

**In addition, Lockheed in its Form 10-K Report submitted to the SEC on March 7, 2002 stated that certain investment assets, including its 24% stock interest in Intelsat, are being held by the corporation and reported under its "Corporate and Other" segment. The 10 K Report also states that the " Corporation is continuing to explore the sale of various investment holdings and surplus real estate" held in the Corporate and Other segment. (Lockheed Martin, 10-K Report, p. 10).**

**Thus, LRT questions the accuracy of the disclosure of information regarding the possible future disposition of Lockheed's stock ownership interest in Intelsat. If Lockheed is planning on selling shares in the IPO or at any other time, it should so disclose in its Application. If it has such plans and has not disclosed this information, it should be found to have misrepresented its position to the Commission.**

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[11] **http://www.reuters.com/news_article.jhtml?type=search&StoryID=895335**

**Should Lockheed fail to provide further information with respect to its share ownership in Intelsat, based on the representations set forth in the Application, the Commission should condition any grant of authority hereunder upon the express requirement that Lockheed not sell any Intelsat shares in the ipo or in any other transaction(s) without applying for and securing the Commission's approval for any such sales.**

## 8. The Proposed Assignment Does Not Satisfy the Commission's Public Interest Criteria

**The parties state that the "proposed acquisition of CWS by Intelsat merits approval under Sections 214, 310(b) 4 and 310 (d) of the Communications. " Application, p.12. In the absence of additional information addressing certain issues as outlined above, LRT must take a counter view. However, LRT is willing to assess additional information provided by the parties. As a result, pending review of supplemental data, LRT is submitting this conditional petition to deny.**

**LRT does not believe that the parties have made a sufficient case supporting the proposition that the assignment will "deliver significant benefits to U.S. consumers, without harming competition." Application,p.13. The parties state that the companies will in effect be combining Intelsat's massive space segment with the marketing and service components of Comsat. This combination clearly raises serious issues.**

**According to the last published reports, Comsat maintained a staff of about 1500 people. This is over three times the reported employment rolls of PanAmSat, as well as other US satellite carriers. Since most of the Comsat employees are devoted to sales and marketing, it is clear that the expanded Intelsat will have a decided advantage over other domestic satellite companies. Certainly, some type of sales impact analysis should be submitted by the Applicants for review by the Commission and other interested parties.**

**As noted, while the Applicants represent that Intelsat possesses all "requisite legal qualifications to hold FCC licenses and authorizations," this representation can only be true and correct if Intelsat can legally acquire the Comsat licenses. This representation is therefore false, since, as noted above, the Comsat licenses are not yet final and are subject to reconsideration and Court review. Intelsat cannot claim compliance with**

**Commission rules if it is seeking to acquire licenses, which have not been granted to assignor Comsat.**

**The parties also represent that potential public interest benefits harms of the proposed transaction on balance outweigh the public interest harms. This is not true. It can never be found that a party proposing to acquire licenses that are still under review by the Commission can be determined to serve the public interest, convenience and necessity. To say otherwise, would reduce the Commission's rules and regulations, not to mention federal communications statutes, to nullities.**

**The parties also represent that Intelsat's expansion into the U.S. marketplace will be in the public interest. (Application, p. 15) However, the parties do nor provide any marketing analysis or other data to permit a reviewer to judge the impact of Intelsat's expansion on the U.S. market. Certainly, the parties should be expected and required to make such a showing.**

**The parties represent that the aggregate level of foreign government interest in Intelsat is no higher than 30% (Application, fn. 23) However, the parties fail to supply any analysis of the likely impact of the pending ipo on the foreign ownership figures. Here again, the Applicants should be expected and required to make this showing.**

## 9. The Proposed Transaction Directly Violate the ORBIT Act

**It is further represented that the transaction is consistent with the ORBIT Act.[12] Here also, LRT must strongly differ from the parties. The transaction clearly violates key provisions of the ORBIT Act.**

**In passing the ORBIT Act, Congress encouraged both the privatization of INTELSAT and Inmarsat, and the revitalization of Comsat, a company that by all accounts had experienced serious reverses and significant management troubles over the last several**

**[12] Open-market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act")Pub.L 106-180**

**years. [13] To accomplish this latter purpose, the Act authorized the acquisition of Comsat by Lockheed, the country's largest defense contractor. [14]**

**Congress worked long and hard in developing the ORBIT legislation. As all industry members recognize, the legislation followed a slow and arduous path through Congress, encountering many obstacles. When the necessary changes were adopted and compromises were reached in March 2000, various members marked this achievement in speeches on the Senate and House floors, which reflected the understandings of the members with regard to the purpose and intent of the ORBIT legislation.**

**The general objectives of the Congress were summarized by Congressman Billy Tauzin, chairman of the Telecommunications, Trade and Consumer Protection Subcommittee as follows:**

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

**In the Senate, Sen. Conrad Burns, Chairman of the Communications Subcommittee included the following remarks upon the adoption of the Conference Report:**

> **This compromise legislation represents the desire of Congress to inject more competition and more privatization into the international satellite communications market. …. The conference has produced an agreement that will encourage expeditious privatization of INTELSAT and Inmarsat and allow Lockheed Martin to**

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**[13] The record before Congress reflected facts that showed Comsat to be experiencing severe financial reverses throughout the prior five years, reaching a point that for some dozen quarters, Comsat was required to reduce its dividends to 5 cents per share, which were paid from retained earnings as the corporation lacked earnings from current operations to meet these and other obligations.**

**[14] The Lockheed acquisition of Comsat was accomplished through a merger between Comsat and Lockheed Martin Global Telecommunications ("LMGT")**

> **reinvigorate COMSAT as a competitor in the international satellite marketplace. At the end of the day, the conference agreement will lead to enhanced competition in telecommunications services, resulting in real consumer benefits of more choices, lower prices and new services. For this, we should all be very proud. I strongly urge my colleagues to adopt this conference report. Congressional Record: March 2, 2000 (Senate)] [Page S1155], emphasis added.**

**From these statements, it is quite obvious that the members expected that, among other things, they were amending the Satellite Act to permit the Comsat-Lockheed merger as a way to rescue Comsat from its precarious position. What they foresaw was Lockheed providing significant resources – financial and otherwise- to shore up Comsat and allow it to reclaim its former leadership position in the communications industry.**

**Clearly, the proposed sale of CWC to Intelsat was never contemplated by the Congress. Further, the proposed transaction is directly contrary to the objectives of the members. It was their express purpose to authorize the Lockheed acquisition of Comsat to create an independent, financially strong and technologically advanced company. This goal will not be achieved by the proposed transaction. Indeed, it is highly unlikely that the Congress would have given approval to a proposal to allow Comsat, the country's first ,and formerly leading, satellite company to be broken up and acquired in part by Intelsat.**

**The Congressional statements with regard to the adoption of the ORBIT legislation include a Joint Statement of Primary Original Sponsors of Legislation Committee on Commerce, former representative and Committee Chairman Tom Bliley (R-Va) and Ranking Democrat of the Telecommunications, Trade and Consumer Protection Subcommittee Edward J. Markey Representative John Dingell (D-MI), ranking Democrat on the House Commerce Committee. The Joint Statement sets out the following observation:**

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

**The statement reflects the Committee's clear intention, as a matter of national policy, to mandate the dilution of the interests of the original INTELSAT and Inmarsat entities by reducing the share interests of their signatories. The proposed transaction , which in effect increases the interests of Intelsat through its acquisition of CWS, is directly contrary to the express goals and interests of the Congress.**

**It was a key objective of the Congress to assure that the ownership interests of all INTELSAT and Inmarsat signatories in existence as at the date of the enactment of the ORBIT legislation ("Identified Signatories") be strictly limited, as per the intent of Congress. Further, it was the objective of the Congress to limit the original ownership interest of Intelsat. These objectives are not met by the proposed transaction, which would result in the expansion of Intelsat through its acquisition (and dissolution) of Comsat, an original finding shareholder of Intelsat..**

## 10 LRT's Comsat Liquidation Proposal

**LRT is particularly concerned with the disposition of all Comsat assets by Lockheed, including its share interest in Intelsat and Inmarsat Ventures, Ltd. This long standing concern dates to 1995, when LRT developed a proposal, which it subsequently submitted to the Commission, designed to provide a new and needed source of funding to assist the digital conversion of small market, low power, minority owned and public television stations and cable systems. The vast majority of these operators lack any ready means to finance the upgrading of their transmission facilities.**

**The original LRT proposal called for the adoption of a Commission order directing that all proceeds received by Comsat from the privatization of Intelsat and Inmarsat be paid to the US Treasury and dedicated to a Digital Conversion Fund to provide loans or grants for the digital conversion of under-funded tv station operators and cable system owners. Recently, based on certain events, LRT has amended its proposal to require that Lockheed, as the current owner of Comsat, pay over all proceeds, which it receives from its sale of any and all Comsat assets, including the sale of its equity interests in Intelsat and Inmarsat and the sale of Comsat assets to Intelsat and Telenor, ASA.**

**As has been outlined in earlier LRT filings to the Commission on this subject, its proposal is based on sound policy objectives. Further, it is LRT's view that its plan is consistent with the Commission's delegated powers and precedents.** [15]

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**[15] The Commission has regularly confirmed that Comsat must be held to its public interest standard and limitations imposed by the Commission. (see *Comsat Study*, 77 Commission 2d at 581). This ultimate standard, in the Commission's view, must be deemed to be well understood by the corporation and its investors. The Commission has observed that :**

**When Comsat was founded by Congress in 1962, it provided Comsat a monopoly over the sale of Intelsat space capacity in the US. This monopoly, which operated as an indirect tax on major US carriers purchasing transponder circuits, returned literally billions of dollars to Comsat over a 30 year period. The company never paid or offered to pay any amount of these monopoly proceeds to the US Treasury, an action, which LRT contends would certainly have been appropriate.**

**In light of the foregoing considerations, LRT submitted its proposal to the Commission in early 1996, which called for the adoption of an order requiring Comsat to divest all windfall proceeds received from the privatizations of Intelsat and Inmarsat. As outlined in the initial LRT submission, and as restated in subsequent filings, the ownership interests held by Comsat in the two international satellite organizations, which were largely purchased with revenues derived from the transponder sales monopoly, should properly be regarded as national assets. Accordingly, it is LRT's position that the proposed divesting of Comsat's financial windfall created through the privatization of Intelsat (and Inmarsat) should be found to be a small return of the billions of dollars realized by Comsat through its transponder sales monopoly.**

**As the LRT proposal has remained before the Commission, events have occasioned a further amendment to its basic terms. Lockheed's acquisition of Comsat was undertaken pursuant to special authority provided by Congress in the ORBIT Act, and came at a time when Comsat was experiencing severe financial reverses, reflected in continuing operating losses and its sale of all of its non core assets.[16] In securing Congressional action approving the merger, Lockheed represented that it would invest resources- both**

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> **"...Comsat's investors clearly had prior notice that the corporation created by the 1962 Act would have special responsibilities and potential limitations. Prospective investors were made fully aware that (1) the scope of the corporation's activities would be limited to those defined by the 1962 Act, and (2) the corporation would be a rate-regulated firm subject to governmental oversight. (citing Prospectus of Communications Satellite Corporation, June 2,1964.)" *Comsat Study*, 77 Commission 2d at 581-82.**

**The Commission has concluded that the investing public must be found to have "knowingly assumed the risk of any governmental limitations that would be placed on Comsat as a result of its special public obligations." Id. Certainly, if Comsat shareholders have been found to have assumed the risk of governmental limitations, there can be no question that the company's senior officers and directors, given their knowledge and involvement in the company's operations, must be deemed to have assumed similar, if not greater risk with respect governmental limitations which may be placed on their interests. Finally, Lockheed must be presumed to have purchased Comsat stock with full knowledge of and subject to the aforesaid governmental limitations and related policies, including divestiture.**

**[16] This sale included the spin off of Comsat's interest in its entertainment subsidiary, which included among its activities the distribution of pornographic films to over 1 million hotel rooms throughout the US. LRT continues to prosecute a rule making proceeding before the Commission seeking the adoption of rules to prevent companies such as Comsat from distributing obscene materials without proper safeguards to prevent viewing by minors. It is noted that these activities by Comsat violated the public interest standard of**

**financial and manpower- to stabilize and restore Comsat. These representations were clearly reflected in the Congressional Record.** [17]

**As has now been made clear by subsequent events, Lockheed did not maintain its commitments to Congress. Indeed, within days of closing the merger on August 3, 2000, Lockheed sold one third of Comsat's stock interest in Inmarsat to Telenor, ASA for $166 million, in a transaction, which LRT maintains violated the ORBIT Act. This was followed within a few more months by Lockheed's sale of the Comsat Mobile Satellite division to Telenor, notwithstanding the fact that 79% of the stock of the acquiring company is owned by the Kingdom of Norway. The Commission approved this transaction, marking the first time that US communications licenses have been transferred to a company controlled by a foreign sovereign (*In re Comsat Corporation*, Commission 01-369).** [18]

**Then, in December of last year, Lockheed announced its decision to terminate its Global Telecommunications subsidiary and its plan to liquidate substantially all remaining Comsat assets. At the same time, Lockheed revealed that it would be taking a $1.8 billion tax write-off as a result of its inability to operate its telecommunications business.**

**LRT views Lockheed's failure to invest financial resources in Comsat and its precipitous actions in selling off Comsat assets and exiting the telecom business as a total denial of fundamental trust, and more accurately, an outright misrepresentation to the Congress**

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**the Communications Satellite Act, constituting an independent character disqualification issue.**

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

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

**[18] LRT has petitioned for reconsideration of this ruling. LRT maintains that this transaction violates Congressional policy reflected in 47 USC § 310(b). Additionally, LRT views this a violative of homeland security orders and directive adopted in the wake of the tragic events of September 11.**

**and the Commission. Simply stated, it appears that Lockheed did not invest any funds in an effort to restore Comsat. Rather, it pursued a plan to acquire the Comsat assets based on a series of representations fully reported in the Congressional Record, which proved to be untrue. It now is seeking to profit through the sale of these assets.**

**LRT believes that this is a matter, which demands full and complete review and investigation by the Commission and the Congress.**

**As a result of Lockheed's actions, LRT has amended its basic Digital Conversion Fund proposal to seek an order of the Commission requiring that Lockheed divest all proceeds which it receives from the sale of Comsat assets, including the sale of Intelsat and Inmarsat stock, so that they may be directed to the public purpose of assisting with the funding of digital conversion of tv broadcasters and cable operators in the US.**

**As has been noted in each of LRT's filings on this subject, the Commission is fully empowered to order the proposed divestiture of proceeds from the sale of Comsat assets. As referenced above, this authority was provided in the Communications Satellite Act of 1962.**

**Clearly, the segments of the television and cable industries- small market, minority, low power and public owners- targeted by the LRT proposal lack ready access to the funding necessary to convert to digital transmission facilities. It is LRT's position that Lockheed's windfall proceeds generated from Intelsat/Inmarsat privatizations and the dissolution of Comsat can and should be dedicated to this critical public purpose.**

**The LRT proposal serves the public interest. Indeed, it is hard to see how any party could not favor and support this proposal. Comsat, which has for all practical purposes ceased to exist, certainly cannot be heard to object. Lockheed, the country's largest defense contractor and a leading recipient of federal funds, should find no reason to object to the proposal, which in essence returns to the US Treasury a part of the monies generated by the operation of Comsat as funded through its Intelsat monopoly. Finally, Intelsat, which has contracted to purchase CWC, the basic Comsat operating division, for $120 million, should favor this particular utilization for the proposed public interest purpose.[19] Indeed, the LRT proposal actually benefits Intelsat as it will facilitate the upgrading of US**

**[19] Indeed, the LRT proposal actually benefits Intelsat as it will facilitate the upgrading of US**

**television and cable facilities, thereby directly aiding a key segment of Intelsat's user base.**

**In view of the fact that Lockheed is now seeking to speed the liquidation of Comsat assets, LRT is undertaking to bring its Comsat Divestiture Proposal to the attention of concerned industry representatives (National Association of Broadcasters, NCTA, PBS, etc), as well as television station and cable system owners and operators to provide them the opportunity to register their support for the LRT proposal. The support of concerned Members of Congress and Congressional committees is also being sought.**

**As witnessed by the Commission's recent actions in commencing a rule making to sanction those tv licensees that do not comply with the digital conversion rules, severe problems are being encountered throughout the industry as stations seek to upgrade of their production and transmission facilities.[20] It is obvious by the Commission's recent action that many stations lack access to capital necessary to convert to the digital standard. Commission staff has previously commented on the soundness of the LRT proposal. It is now the appropriate time to bring this matter to the attention of the full Commission.**

## 11. Non Compliance With Foreign Ownership Restrictions

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

**Applicants request approval of the Application based upon the finding that the transaction will serve the public interest under Section 310 of the Act. Additionally, Applicants request that the Commission approve the assignment of various international Section 214 authorizations from Comsat to Intelsat.**

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**television and cable facilities, thereby directly aiding a key segment of Intelsat's user base.**
**[20] See Commission SETS RULEMAKING TO ESTABLISH REMEDIAL MEASURES FOR UNEXCUSED FAILURE TO CONSTRUCT DIGITAL TELEVISION FACILITIES; MM Docket 02-113**

**The Applicants contend that the proposed transaction poses no risk of harm to the already competitive marketplace for U.S. international satellite communications services. It is the position of the Applicants that the proposed transaction will enhance the range and quality of satellite based telecommunications services available to US customers, while also satisfying the United States' market-opening commitments under the World Trade Organization's Agreement on Basic Telecommunications Services (the "WTO Basic Telecom Agreement')."**

**Applicants contend that the proposed transaction presents no legal impediments to the Commission's approval grant. Citing the *Deutsche Telekom-VoiceStream* order[21], the parties maintain that the US subsidiaries of the Bermuda-incorporated Intelsat are fully qualified to hold the Title III licenses and Title II authorizations at issue here. Further, it is argued that the entry of Intelsat's US subsidiaries into the domestic marketplace are presumed to be pro-competitive.**

**Applicants also report that Intelsat has not initiated negotiations with relevant U.S. executive branch agencies and will abide by the terms of an anticipated agreement with those agencies with respect to national security and law enforcement issues.**

### 12. Special Considerations Raised With Respect to Assignee

**Applicants maintain that Intelsat is financially, legally and technically qualified to receive a grant of the assignments of the subject licenses and authorizations. In support of this position, it is noted that Intelsat, indirect owner of the assignee, is a leading global supplier of satellite telecommunications services and Intelsat, with over $1 billion in annual sales, is financially and technically qualified to operate CWC.**

**Applicants also contend that Intelsat's eligibility to hold CWC's Title II authorizations and Title III licenses is consistent with the Communications Act and the rules and policies adopted thereunder. Specifically, applicants maintain that the proposed ownership and control structure as outlined in the Application is fully consistent with the corporate**

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**http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-222561A4.doc**

**[21] Applications for Consent to the Transfer of Control of Licenses and Authorizations by Deutsche Telekom AG and VoiceStream Wireless Corp. et al, Memorandum Opinion and Order, Commission No. 01-142, IB Docket No. 00-187 (rel. April 27, 2001) (" Deutsche Telekom-VoiceStream Order")**

**governance approach adopted in the *Deutsche Telekom-VoiceStream Order*. LRT objects to this conclusion.**

**The proposed assignment of licenses and authorizations by Comsat to Intelsat will result in these U.S. government permits being issued to companies ultimately wholly-owned by Intelsat, a company organized under the laws of Bermuda and in which a series of sovereign nations own at least 30% of the issued stock. It is left to be determined how these various governments exercise their powers over the activities of the corporation. This situation is clearly distinguished from Deutsche Telekom where a single government, Germany, was not in control of the US licenses following the Voice Stream merger.**

**In the DT-VS merger, the parties petitioned the Commission to find that the resulting indirect foreign and government ownership of their common carrier wireless licenses was permissible under section 310(b)(4) of the Act.[22] In the *Deutsche Telekom-VoiceStream Order* the Commission resolved the relationship between the restrictions on foreign government ownership in section 310(a) of the Communications Act and the provision providing for indirect foreign government ownership in section 310(b)(4),as a matter of first impression for the Commission.[23] In its ruling, the Commission concluded that, pursuant to the terms of the statute, indirect ownership of the licensee by a foreign government, foreign corporation, and aliens resulting from the proposed transaction should be addressed only under section 310(b)(4). The said section provides that an alien or foreign government or their respective representatives or any corporation organized under the laws of a foreign country may hold greater than a 25-percent interest in a corporation that controls a corporate licensee, unless the Commission finds that the public interest will be served by refusal or revocation of the license.[24]**

**Actually, Section 310 provides several discrete categories of restrictions on foreign ownership of radio licenses. First, sections 310(a) and 310(b)(1) and 310(b)(2) provide:**

> **The station license required under this Act shall not be granted to or held by any foreign government or the representative thereof.**
>
> **No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by –**

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

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

**[24] *See* 47 U.S.C. § 310(b)(4).**

**any alien or the representative of any alien;**
**any corporation organized under the laws of any foreign government;**

**Thus, sections 310(a), (b)(1), and (b)(2) by their express terms prohibit radio licenses from being "granted to or held by" foreign governments and their representatives, aliens and their representatives, and foreign corporations.[25] Section 310(b)(3) extends the prohibition to corporations that are more than 20 percent owned directly by the entities identified in sections 310(a), (b)(1), and (b)(2).[26] Section 310(b)(3) provides:**

> **No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by –**
> **any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country.**

**Finally, section 310(b)(4) provides:**

> **No broadcast or common carrier or aeronautical en route or aeronautical radio station license shall be granted to or held by –**
> **any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.**

**Therefore, section 310(b)(4) extends the prohibition to any corporation that is directly or indirectly controlled by another corporation that is more than 25 percent owned by the entities identified in sections 310(a), (b)(1), and (b)(2), if the Commission finds that the public interest will be served by not granting a license in this circumstance.[27]**

**In the Deutsche Telcom-Voice Stream Order, the Commission concluded :**

> **that the legislative evolution of these statutory provisions indicates that the categories of restrictions developed over time to reach situations where the foreign connection was progressively less direct and imposed restrictions that were progressively less absolute. The first restrictions, set forth in the Radio Act of 1912, required licensees to be U.S. citizens or domestic corporations (effectively prohibiting aliens, foreign governments, or foreign corporations from holding**

[25] **47 U.S.C. §§ 310(a), 310(b)(1)-(b)(2).**
[26] **47 U.S.C. § 310(b)(3).**
[27] **47 U.S.C. § 310(b)(4).**

**licenses).[28] That requirement was almost immediately interpreted, according to its plain language, to allow a license to be held by a domestic corporation that was itself a subsidiary of a foreign corporation.[29] The Radio Act of 1927 imposed foreign ownership restrictions in language quite similar to that currently contained in sections 310(a), (b)(1), (b)(2), and (b)(3).[30] It addressed a circumstance not covered under the 1912 Act (foreign ownership of domestic corporations holding licenses) by extending the prohibition of alien ownership to corporations that were more than 20 percent owned by the prohibited entities, in language now reflected in section 310(b)(3).[31] Like sections 310(a), (b)(1) and (b)(2), section 310(b)(3) establishes an absolute prohibition on interests exceeding the 20 percent limit. At the same time, by allowing licensee corporations with up to 20 percent foreign ownership, the provision allows some degree of investment in licensees by those barred from holding licenses directly.**

**In the Communications Act of 1934, Congress added the provision now contained in section 310(b)(4) to address another circumstance not previously covered: foreign ownership of domestic holding companies that directly or indirectly controlled domestic corporations holding licenses.[32] The provision represented a compromise between competing policy considerations. The Navy argued for an absolute prohibition against foreign participation and control of licenses through holding companies.[33] Others countered that restricting foreign control in holding companies that controlled licenses, such as International Telephone and Telegraph, would be detrimental to domestic and**

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[28] *See* Radio Act of Aug. 13, 1912, Pub. L. No. 62-264, § 2, 37 Stat. 302, 303 (stating "such license shall be issued only to citizens of the United States or [Puerto] Rico, or to a company incorporated under the laws of some State or Territory or of the United States or [Puerto] Rico").

[29] *Radio Communication—Issue of Licenses*, 29 Op. Att'y Gen. 579 (1912); *see also* J. Gregory Sidak, *Foreign Investment in American Telecommunications* 27-28 (1997) (*Foreign Investment*) (discussing Attorney General George W. Wickersham's advisory opinion concerning the Radio Act's foreign ownership provisions).

[30] Section 12 of the Radio Act of 1927 provided, among other things, that:

> The station license required hereby shall not be granted to, or after the granting thereof of such license shall not be transferred in any manner, either voluntarily or involuntarily, to (a) any alien or the representative of any alien; (b) to any foreign government, or the representative thereof; (c) to any company, corporation, or association organized under the laws of any foreign government; (d) to any company, corporation, or association of which any officer or director is an alien, or of which more than one-fifth of the capital stock may be voted by aliens or their representatives or by a foreign government or representative thereof, or by any company, corporation, or association organized under the laws of a foreign country.

Radio Act of 1927, Pub.L. No. 69-632, § 12, 44 Stat. 1162, 1167.

[31] *Id.*

[32] Study of Communications by an Interdepartmental Committee; Letter from the President of the United States to the Chairman of the Committee on Interstate Commerce transmitting a Memorandum from the Secretary of Commerce Relative to a Study of Communications by an Interdepartmental Committee, S. Comm. Print, 73d Cong. 2d Sess. 6 (1934) (*Interdepartmental Study*) ("In 1927 when the Radio Act was made law, Congress . . . went to a great length in section 12 of that act to prevent foreign influence from entering our communication system. They were unsuccessful, to some extent, as a loophole in the law permits a *foreign-dominated* holding company to own United States communication companies. This flaw in the law has already been utilized for that very purpose and the one member strongly advises that now is the time to remedy the defect.") (emphasis added).; *see also Federal Communications Commission: Hearings on S. 2910 Before the Sen. Comm. on Interstate Commerce*, 73d Cong., 2d Sess. 166-68 (1934) (*1934 Senate Hearings*); Sidak, *Foreign Investment* at 64-73.

[33] *Federal Communications Commission: Hearings on H.R. 8301 Before the House Comm. on Interstate and Foreign Commerce*, 73d Cong., 2d Sess. 51-53 (1934). For example, Captain Hooper, Director of Naval Communications testified that "the communications facilities of a nation must be controlled and operated exclusively by citizens of that nation, and entirely free from foreign influence." *1934 Senate Hearings* at 170; *see also* Sidak, *Foreign Investment* at 64-65 (discussing Hooper's testimony).

**international competition and would lead to international retaliation.[34] Balancing these conflicting concerns, Congress chose not to adopt an absolute prohibition.[35] Instead, it barred the entities described in sections 310(a), (b)(1) and (b)(2) from owning more than 25 percent of such a holding company only if the Commission found such restrictions to be in the public interest in the particular case.[36]**

**When section 310 of the Communications Act was enacted in 1934, the provisions contained in current sections 310(a) and (b) were contained in a single section 310(a). In 1974, the Communications Act was amended to separate sections 310(a) into the current sections 310(a) and 310(b).[37] The legislative history reflects that this structural change was designed to lessen the burden on private radio licensees and permit entities other than foreign governments and their representatives to hold private radio licenses directly.[38]**

**However, the legislation as adopted by Congress did not consider the situation which obtains in the case of Intelsat, i.e., the joint ownership by a group of sovereign countries.**

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[34] *See To Amend the Radio Act of 1927: Hearings on H.R. 7716 Before the Sen. Comm. on Interstate Commerce*, 72d Cong., 1st Sess. 16 (1932) (statement of Sen. White) ("It might cost this American company its entire foreign setup in some of the countries that might be affected by it. I think, we would all agree that we would much prefer that there were none of these foreign directors but I think that weighs but a feather against the tremendous advantage of having this company maintain its radio services throughout the world and maintain for us here in this country the competitive services which result from their system.").

[35] *See* H.R. Conf. Rep. No. 1918, 73d Cong., 2d Sess. 48-49; H.R. 7716, 72d Cong., 2d Sess., at 17 (1932); *see also Noe v. Federal Communications Commission,* 260 F.2d 739, 741 (D.C. Cir. 1958). Congress declined to adopt an outright ban on alien interests, fearing that such a ban would invite international retaliation. *See 1934 Senate Hearings* at 123.

[36] This restriction also applied to aliens serving as officers or as more than 25 percent of the board of directors until Congress removed the restriction in 1996.

[37] Section 310(a)(1)-(5), prior to the 1974 amendments, provided as follows:

> (a) The station license required shall not be granted to or held by –
>
> (1) Any alien or the representative of any alien;
>
> (2) Any foreign government or the representative thereof;
>
> (3) Any corporation organized under the laws of any foreign government;
>
> (4) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;
>
> (5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted, after June 1, 1935, by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or the revocation of such license.

47 U.S.C. § 310(a)(1)-(5) (1970).

[38] *See* S. Rep. No. 795, 93d Cong., 2d Sess. 1 (1974) ("The purpose of this legislation is to amend section 310 of the Communications Act of 1934, as amended, to permit direct licensing of aliens and corporations with certain alien officers, directors or stockholders rather than licensing them indirectly under subsection 310(a)(5) of the Communications Act of 1934, as amended, which has been utilized to set up a subsidiary corporation with no alien officers or directors, to be the radio licensee."). *See also infra* para. 46 discussing the purpose of the 1974 amendments.

**As a central finding in the *Deutsche Telekom-VoiceStream Order*, the Commission concluded that section 310(a) does not expressly prohibit indirect foreign government control of licensees and that the express terms of section 310(b)(4) allow indirect ownership of a licensee corporation in excess of 25 percent by foreign governments and their representatives—as well as aliens, aliens' representatives, and foreign corporations—provided the Commission does not find it would serve the public interest to deny such ownership. It also found that nothing in the language of section 310(b)(4) limits its application to holdings that amount to less than control. *See Deutsche Telekom VoiceStream Order* at ¶ 39.**

**Historically, the Commission has analyzed cases involving indirect alien ownership as described in section 310(b)(4) under that section rather than sections 310(b)(1) or (3), even where the ownership amounted to indirect *de jure* control of the licensee through a holding company that controls the licensee.[39] For example, in the *Cable & Wireless* decision the Commission had to decide whether the proposed controlling interest in the licensee by an indirect, wholly-owned, subsidiary of a publicly-traded English parent company would be permitted.[40] There, the Commission considered the transaction solely under section 310(b)(4). In similar fashion, when adjudicating the *GRC Cablevision* application, where the ultimate shareholders were Canadian citizens, the Commission analyzed the transaction directly under the provisions of section 310(a)(5) (the precursor to section 310(b)(4)), rather than first under section 310(b)(1).[41]**

**In the alien ownership decisions, the Commission has determined that section 310(b)(4) applies where a holding company is controlled by alien ownership. The language in section 310(b)(4) gives no indication that foreign governments are to be treated any differently than aliens or foreign corporations.**

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[39] *See In the Matter of the Applications of Intelsat LLC*, Memorandum, Opinion, Order and Authorization, 15 FCC Rcd 15460, 15481, para. 48 (2000) (*Intelsat*) (analyzing indirect holding or control under section 310(b)(4)); *In the Matter of Petition of Cable & Wireless, Inc.,* Declaratory Ruling and Memorandum Opinion and Order, Authorization and Certificate, 10 FCC Rcd 13177, 13178-80, paras. 11-23 (1995) (*Cable & Wireless*) (approving controlling interest by aliens of parent corporation that controlled corporation applying for very small aperture terminal licenses); *In re Applications of GRC Cablevision, Inc.,* Memorandum Opinion and Order, 47 Commission 2d 467-68, para. 3 (1974) (*GRC Cablevision*) (approving controlling interest by aliens of parent corporation that controlled corporation applying for cable antenna radio services licenses at time when such licenses were covered by section 310(b)); *see also In re Application of MAP Mobile Communications, Inc.,* Order, 12 FCC Rcd 6109, 6115-16 (Int'l Bur., 1997) (authorizing wholly-foreign owned company to bid for PCS and CMRS licenses); *In the Matter of Melbourne International Communications, Ltd.,* Order, Authorization and Certificate, 12 FCC Rcd 898, 902, para. 11 (Int'l Bur., 1997) (approving controlling interest by aliens of parent corporation that controlled corporation holding two common carrier satellite earth stations); *In the Matter of GCI Liquidating Trust,* Memorandum Opinion and Order, 7 FCC Rcd 7641, paras. 3-4 (Dom. Fac. Div. 1992) (approving acquisition of controlling interest by aliens of parent corporation that controlled common carrier microwave licensee).

[40] *See Cable & Wireless*, 10 FCC Rcd at 1378-80, paras. 11-23.

[41] *See GRC Cablevision*, 47 Commission 2d at 467-68, para. 3.

**Further, in the *Intelsat* case,[42] the Commission resolved an indirect alien ownership issue by referring solely to section 310(b)(4), since *Intelsat* involved alien control of a holding company that owned the entity holding the license. In that case, the Commission considered that the matter was governed exclusively by section 310(b)(4).**

**In the *Deutsche Telekom Order*, the Commission concluded that a consistent approach ought to be applied to its analysis of foreign government ownership, as the language in section 310(b)(1) prohibiting aliens from holding licenses parallels the language in section 310(a) prohibiting foreign governments from holding licenses. The Commission also distinguished its discussion of section 310(a) in the *Intelsat* case which it admitted could be read to take a different approach:**

> **… we find that discussion not controlling. In response to arguments made by PanAmSat asserting that foreign government components of Intelsat had de jure and de facto control over Intelsat LLC (the licensee), the Commission pointed out that the 30 percent government-controlled interest in Intelsat constituted neither de jure nor de facto control over the licensee. That statement was sufficient to dispose of the arguments in Intelsat; nothing in the language was intended to imply that section 310(a) is applicable to indirect de jure control or to reflect any determination concerning the appropriate scope of matters covered by section 310(a).[43] To the extent that there is any confusion, we take this opportunity to make clear that nothing in the Intelsat case should be read as contrary to our current analysis of section 310(a) as the issue is squarely presented by this case.**

**The public interest provisions of the Act allow the Commission to examine a transaction and reach a conclusion based on the particular facts in cases involving indirect control of licensees by a foreign government. In a particular case, for example, section 310(b)(4) allows the Commission to take into account the potential adverse impacts of prohibiting indirect ownership and control in this case (e.g., lost domestic competition and international retaliation) at a time when the structure of international competition in telecommunications markets is at least as critical to U.S. consumers and businesses as it was in 1934.[44]**

**In making its public interest determination, the Commission, consistent with the Deutsche Telekom-Voice Stream Order, must first analyze whether there are special risks to competition in the United States associated with the Intelsat's ownership structure. The Commission must also determine whether Intelsat control of the licenses and**

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[42] *Intelsat,* 15 FCC Rcd at 15481-84, paras. 48-55.

[43] In *Intelsat*, the Commission described the test for invoking a section 310(a) analysis as "whether a foreign government or representative thereof exercises direct *de jure* or *de facto* control over a licensee." *Id.*

[44] *Foreign Participation Order,* 12 FCC Rcd at 23894, para. 4 (U.S. companies allowed to enter previously closed foreign markets and develop competing networks for local, long distance, wireless and international services).

**authorizations at issue raises concerns relating to national security, law enforcement, and public safety.**

## 13. Need for Analysis of the Competitive Impact of the Transaction

**The Commission has previously set forth the standards for analyzing competitive concerns resulting from foreign participation in U.S. telecommunications markets *(see Foreign Participation Order*.[45]) Specifically, the Commission found that applying an "open entry" standard under section 310(b)(4) to indirect foreign ownership in licensees involving WTO Members, in conjunction with enhanced safeguards and WTO Members' commitments to liberalize and privatize their markets, would better achieve its pro-competition goals.[46] The Commission removed the previous Effective Competitive Opportunities (ECO) test from the public interest analysis in making section 310(b)(4) determinations with respect to WTO Members.[47] As observed by the Applicants[48], the Commission replaced the ECO test with a rebuttable presumption in favor of entry for applicants from WTO Members.[49] In adopting this presumption as a factor in its public**

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[45] *See generally Foreign Participation Order*, 12 FCC Rcd at 23894, para 4. In the *Foreign Participation Order*, the Commission determined that U.S. consumers and companies would reap tangible benefits from the removal of obstacles to entry into all telecommunications service markets, including those entry barriers that exist in the U.S. market. *Id.* at 23894-95, paras. 4-5. The Commission concluded that in light of market access commitments undertaken by WTO members, as well as the Commission's increasingly more deregulatory framework, it served the public interest to take steps, in parallel with the United States's major trading partners, to ease requirements for entry by foreign companies into the U.S. market. *Id.* at 23983-94, para. 2. The Commission observed that the WTO commitments would create obligations on foreign governments to allow U.S. companies to enter previously closed foreign markets and to develop competing networks abroad for local, long distance, wireless, and international services. *Id.* at 23894, para. 4. Likewise, the Commission reasoned that additional foreign investment in the U.S. market would promote further competition and result in substantial benefits to U.S. consumers, including lower prices for existing services and greater service innovation. *Id.* at 23896-97, para. 10.

[46] *Foreign Participation Order*, 12 FCC Rcd at 23897-98, para. 13.

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

[48] See Approval Application, 24

[49] *Foreign Participation Order*, 12 FCC Rcd at 23913, para. 50 (applying standard to applications for section 214 authority, as well as for approval under section 310(b)(4)). We note that several of DT's German competitors urge the Commission not to apply this rebuttable presumption to the DT Transfer Applications. *See* Novaxess Comments at 3-4; QSC Comments at 10-11. Specifically, these commenters argue that (i) the *Foreign Participation Order* did not abolish the ECO test and only contemplated using the open entry presumption in routine cases as a single factor in the public interest analysis; (ii) the Commission should not "[u]nthinking[ly] [apply] the presumption to the German local access market in which a dominant, government-controlled ex-monopolist maintains its stranglehold on competition and is keeping U.S. and other telecommunications carriers from [entering the market.];" (iii) the distinction between WTO and non-WTO Members should not apply to global players like DT; (iv) the Commission's assumptions about competition in WTO member countries do not hold true for Germany and DT, especially given the increasingly global market for roaming

**interest analysis, the Commission made no distinction between government and private foreign ownership.**

**Over the past decade, the Commission has generally acknowledged the benefits of increased foreign participation in the U.S. telecommunications marketplace, while remaining sensitive to its responsibility to promote U.S. competition and to protect national security and other interests raised by the Executive Branch in reviewing proposed foreign ownership. In this process, the Commission has correctly acknowledged the possibility that entry by a foreign carrier might under some circumstances be so detrimental that the standard competitive safeguards would be ineffective.[50] In such a case, the Commission has made clear that it would impose conditions on an authorization, or where an application poses a "very high risk to competition" in the U.S. market that cannot be addressed by such conditions, deny an application.[51]**

**Certainly, consideration here must be given to the possible competitive impact, which the proposed combination of CWC and Intelsat may have on the marketplace. Applicants have downplayed any negative impacts by providing a picture of an ever-expanding marketplace where a strengthen combined Intelsat-CWC will contests with larger and expanding companies.**

**Another picture could be presented, one that is hardly as rosy. The marketplace for the full range of satellite carriers is presently peopled with as many bankruptcy lawyers as communications engineers. Over the last three years, Iridium, ICO and Orbital Sciences**

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**services which was unforeseen at the time the *Foreign Participation Order* was adopted; and (v) the *Foreign Participation Order* did not specifically address foreign government ownership. Novaxess Comments at 3-4; QSC Comments at 10-11. These commenters essentially seek further reconsideration of the *Foreign Participation Order*. Even if such requests were timely, many of their arguments were considered and rejected in the original Order and the subsequent Order on Reconsideration; the remaining arguments simply misinterpret the foreign entry policies the Commission adopted in 1997. First, the Commission in 1995 considered the possibility that a foreign carrier may operate in multiple markets and decided to conduct its analysis pursuant to section 310(b)(4) by reference to a single "home market" for a carrier. *See Foreign Carrier Entry Order*, 11 FCC Rcd at 3949, para. 201; *Foreign Participation Order*, 12 FCC Rcd at 23941, para. 116. The Commission retained this "home market framework" when it adopted the rebuttable presumption favoring market entry by carriers with indirect ownership from WTO members. Second, contrary to commenters' claims, the Commission expressly eliminated the ECO test for WTO Members. *Foreign Participation Order*, 12 FCC Rcd at 23897, para. 13 (noting that "[o]ur rules will no longer require applicants from WTO members to demonstrate that their markets offer 'ECO'") and 23896, para. 9 (removing the ECO test and replacing it with an open entry standard, without making any distinction between routine or non-routine applications). In fact, in the *Foreign Participation Order*, the Commission declined a similar request from AT&T to continue to evaluate whether an applicant's country provides unrestricted market access and satisfies its market opening commitments. *Id.* at 23905-07, paras. 32, 36-37. Our open entry policy does not distinguish among WTO Members, and is not premised, as commenters conclude, on an analysis of actual conditions of entry in a foreign market. The Commission instead relies on the increase in global competition coupled with dominant carrier safeguards to protect competition in U.S. markets. We note that, to the extent that a WTO member fails to fulfill its WTO obligations, these are trade violations that can be addressed through the WTO dispute resolution process.**

**[50] *Foreign Participation Order*, 12 FCC Rcd at 23914, para. 52.**

**have found their way into Chapter 11 proceedings. It is also noted that Globalstar, which some 12 months ago ceased servicing its debt , has been unable to maintain its listing requirements with NASDAQ. Meanwhile, the industry awaits the entry of Teledesic and Spaceway. Against this landscape, the entry of a combined Intelsat-CWC operation can be seen to constitute a potential new and growing market force, which Applicants stress will offer worldwide service, incorporating a host of technical and operational efficiencies. The Commission must seriously weigh all of these factors to determine the competitive impact which will likely result from the creation of the expanded Intelsat satellite services business.**

**Applicants present a cogent argument that the combining of the Intelsat and CWC operations will produce a broad array of new services and, by joining earth station resources, create a more efficient operation. At the same time, this situation can produce a new company, which can grow over time to exercise market dominance. This is especially the case where the industry, includes large companies experiencing severe economic reverses and hundreds of small companies (Inmarsat service providers) that can exercise no market powers whatsoever.**

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

**Furthermore, specifically with respect to the US market, it is necessary for the Commission to determine the likely impact the proposed transaction will have in promoting competition. Based on the data included in the Application, the Commission cannot make such a finding. While the parties include general information describing hoped for gains through increased efficiencies produced by joining technical facilities and operating staffs, no assessment is included to predict the likely effect with the transaction will have to drive competition in the US mobile satellite market.**

**In this connection, serious attention must be given to the market power which can result from the participation in and control of Intelsat by its shareholdings which includes a**

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[51] ***Id.***

**number of sovereign governments. Sovereign governments are unlikely private sector control parties. A government, any government, has unique powers to raise and spend monies different from private sector entities. These capital raising and spending decisions of a government can be driven by many considerations, which are not market driven and can disrupt normal market forces. For example, it is possible for the a government to increase its spending for communications services and facilities ordered and received from Intelsat at price levels which can in effect operate as a type of subsidy to Intelsat. Again, the governments could undertake such actions for various reasons, which may not marketplace related. However, the end result of such actions could artificially increase cash flow and operating margins and thereby permit Intelsat to reduce its prices for satellite facilities, leading to an increase in its share of market and adversely impacting other competitors in the US and other countries.**

**14. National Security Concerns**

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

**The licenses and authorizations at issue have been issued to Comsat, a US Government sponsored enterprise. Since its creation in 1962, Comsat has operated simultaneously as a quasi- government agency and a private stock corporation. Comsat was (and continues) as the government's signatory representative to INTELSAT and Inmarsat inter-governmental organizations which by treaty covenant necessarily limited its activities to non defense matters. These restrictions notwithstanding, as a government sponsored entity, Comsat could freely and routinely coordinate its activities with US Government agencies and departments.**

**In the case of Inmarsat related activities conducted by CWC, it goes without saying that the vast amount of communications data flowing through Comsat ground stations could be coordinated, monitored, and exchanged within the proper national security parameters as requested and required by the US. With the increasing sophistication of communications transmission equipment and satellite monitoring facilities, the vast Intelsat network quite clearly has taken on ever increasing importance with regard to security matters. This matter has become an issue of the highest priority since the events of September 11.**

**With the sale of the CWC assets to Intelsat, ready and continuing access to these Comsat facilities and information would no longer be provided by a US Government sponsored**

**corporation. Further, it will not be provided by an independent, foreign company. Rather, access to data will be through a company which counts among its key owners, a number of sovereign governments. This raises very serious considerations, which must be carefully studied and assessed. Given the size and international scope of communications facilities operated by CWC, the national security implications are far more complex than those involved in the typical terrestrial wireline or cellular system. In light of this fact, the Commission and the Executive Branch should establish a special task force, which would involve all appropriate law enforcement and intelligence agencies and departments.**

**LRT believes the national security concerns involved in operating CWC are of such a complex nature as to preclude the possibility of transferring this business to the control of a foreign company, which, in turn, is owned in significant part by foreign governments. However, LRT recognizes that these considerations are matters reserved to the appropriate US Government agencies and departments. LRT therefore reserves judgment pending reviewing a complete analysis by the Commission of the national security concerns at issue in this transaction.**

## 15. Special Considerations Raised With Respect to Assignor

**In the Application, Lockheed/Comsat has presented a series of facts and arguments which seek to bolster its primary argument, i.e. that the transaction in combing CWC and Intelsat will produce better, more efficient and expanded satellite services. What Comsat has failed to address in any way is the reason why it, or rather its controlling parent Lockheed, has decided to sell CWC to Intelsat. Not only has Comsat failed to address this key question, but more importantly, it has neglected to confront the related issue- does the transaction comply with the strict terms of the Orbit Act and the intent of Congress in passing the said legislation.**

**While LRT remains of an open mind on this vital question, it must be convinced that the instant transaction does in fact comply with the Orbit Act and related policy considerations.**

## 15. Notice As to Proposed Protective Orders

**Without respect to the ultimate decision reached by LRT concerning the Application, in the event that the Commission approves the Application, in whole or on part, LRT proposes that the Commission make any grant of authority subject to the Protective Orders set out in Exhibit A hereto.**

**Intelsat is a foreign company seeking the grant of key federal communications licenses and permits, originally granted to Comsat, a U.S. sponsored corporation. The said licenses and permits can properly be considered national assets. In light of the unique nature of the licenses and permits at issue, LRT maintains that the Commission should adopt strict monitoring procedures as outlined in Exhibit A to assure Intelsat's strict and continuing compliance with the rules and regulations of the Commission, as well as all applicable statutes.**

## 14. Conclusion

**LRT views this as a very serious matter. The joint Application is defective and should not and indeed cannot be properly processed. It must be withdrawn and corrected prior to resubmission (if this is the choice of the parties) or amended. In either case, the pleading cycle must be altered.**

**As noted above, LRT is continuing to analyze this situation and will, based on this analysis, determine ultimately whether it can support the Application or move for its dismissal. Until such time, LRT is taking the position that its petition seeking dismissal of the Application is provisional in nature.**

**Respectfully submitted,**

**Litigation Recovery Trust**
**515 Madison Avenue**
**New York, NY 10022-5403**

**By_____**
**William L. Whitely**
**Trustee**

**May 24, 2002**

# EXHIBIT A

## PROPOSED
## INTELSAT PROTECTIVE ORDERS

### DEFINITIONS

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

"Intelsat" means Intelsat, Ltd., all of its wholly owned subsidiaries, and any entities controlled by Intelsat.

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

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

"Closing Date" means the day on which, pursuant to their acquisition agreement, Comsat/ Lockheed and Intelsat cause a license assignment certificate to be executed, acknowledged and filed with the appropriate state governments.

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

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

### CORPORATE COMPLIANCE OFFICER

Intelsat shall appoint a Corporate Compliance Officer to oversee the implementation of and compliance with the Communications Satellite Act and other rules and regulations of the Commission by Intelsat LLC (ICO1) and Intelsat USA License Corp. (ICO2) (Delaware corporations) and to monitor ICO1 and ICO2's actions and oversee the legal compliance activities of all Intelsat companies, and to consult with the Chief of the International Bureau and other appropriate individuals as the Chief

deems necessary on an on-going basis regarding Intelsat's compliance activities. The Corporate Compliance Officer shall provide to an independent auditor copies of all documents regarding compliance that Intelsat provides to the Commission and consult with the independent auditor regarding Intelsat's compliance activities. The audit committee of Intelsat's Board of Directors shall oversee the Corporate Compliance Officer's fulfillment of these responsibilities.

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

Not later than 60 days following the r Closing Date, Intelsat shall submit to the International Bureau a plan for compliance with these procedures. The compliance plan shall be afforded confidential treatment in accordance with the Commission's normal processes and procedures. A letter providing notice of the filing shall be filed the same day with the Secretary of the Commission.

The Corporate Compliance Officer shall designate Intelsat's corporate secretary to attend the Intelsat Board of Directors meetings and those of ICO1 and ICO2 on his or her behalf and to carry out the duties of the Corporate Compliance Officer during such meetings. The Corporate Compliance Officer shall meet with the corporate secretary prior to the Intelsat, ICO1 and ICO2 Board of Directors Meetings to ensure that procedures described herein are fully understood, and after the said directors meetings to ensure that the said procedures were adhered to during the meetings.

## INDEPENDENT AUDITOR

a). Within 30 days of the Closing Date, Intelsat shall, at its own expense, engage an independent auditor to conduct an examination resulting in a positive opinion (with any exceptions noted) regarding the compliance of Intelsat, ICO1 and ICO2 with these procedures during the Compliance Period. The engagement shall be supervised by persons licensed to provide public accounting services and shall be conducted in accordance with the relevant standards of the American Institute of Certified Public Accountants ("AICPA"). The independent auditor shall be acceptable to the Chief of the International Bureau. The independent auditor shall file a report regarding Lockheed's compliance with the procedures described herein every 6 months from the Merger Closing Date until the end of the Compliance Period.

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

c). The independent auditor may verify Intelsat's compliance with these procedures through contacts with the Commission, or with Intelsat.

d). The independent auditor shall notify the Corporate Compliance Officer and the Chief of the International Bureau immediately upon discovering a material failure on the part of Intelsat, ICO1 or ICO2 to comply with any of the procedures described herein.

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

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

## ENFORCEMENT

The specific enforcement mechanisms established by these procedures do not abrogate, supersede, limit or otherwise replace the Commission's powers under the Communications Satellite Act and the Communications Act. Compliance or non-compliance with these procedures by Intelsat, ICO1 or ICO2 does not in itself constitute compliance or non-compliance with any federal, state, or local law or regulation, except the obligation of the Intelsat companies to comply with these procedures.

a). Penalties During The Compliance Period

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

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

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

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

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

Penalties At The End Of The Compliance Period

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

Intelsat, ICO1 or ICO2 will come into compliance with the provisions of the Communications Satellite Act by the end of the Compliance Period and describing the method by which it will come into compliance; or

Intelsat, ICO1 or ICO2 will not come into compliance with the provisions of the Communications Satellite Act by the end of the Compliance Period. In this event, Intelsat will also describe the extent to which Intelsat companies will not be in compliance, identify such steps that, if taken, would bring Intelsat companies into compliance, and submit an Affidavit of Compliance certifying as to the actions to be undertaken by Intelsat to come into compliance.

d). If Intelsat, ICO1 or ICO2 will not be in compliance with the provisions of the Communications Satellite Act and the rules and regulations adopted thereunder at the end of the Compliance Period, then the International Bureau shall have authority to require that by the end of the Compliance Period Comsat will undertake all actions necessary to bring Intelsat companies into compliance with said regulations (such requirement shall become effective at the end of the Compliance Period or within 14 days after Intelsat's receipt of a written order from the International Bureau imposing this requirement, whichever is later).

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

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

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

## SUNSET PROVISION

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

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

Intelsat informs the Commission that it has divested its ownership and control of ICO1 and ICO2 and has no other interests in any licenses or permits granted by the Commission.

For whatever reason, the Congress repeals the Communications Satellite Act.

CERTIFICATE OF SERVICE

I, William L. Whitely, hereby certify that I have this 24th day of May, 2002 forwarded the foregoing Provisional Peition to Deny Email, Fedral Express or US Mail, postage prepaid to the following:

Via Email
David B. Meltzer
General Counsel and Senior Vice President
Intelsat Global Service Corporation
3400 International Drive, NW
Washington, DC 20008

Larry W. Secrest
Wily Rein & Fielding
1776 K Street NW
Washington, DC 20006

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William L. Whitely