

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

In the Matter of

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

And

Intelsat, Ltd., Intelsat (Bermuda), Ltd.,
Intelsat LLC, and Intelsat USA License Corp.
Assignee
And Telenor Satellite Inc., Assignee

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

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IB DOCKET NO. 02-87

REPLY COMMENTS

Litigation Recovery Trust (“Petitioner” or “LRT”), on behalf of its members and its associated entities¹, hereby submits its Reply Comments in this proceeding. Previously, Petitioner submitted a Provisional Petition to Deny, including Request for Protective Orders (“Petition”), which referenced, among other actions, the LRT Reconsideration Petition (“Reconsideration Petition”) in the Commission’s current reconsideration proceeding related to the merger of Comsat Corporation (“Comsat”) and Lockheed Martin Corporation (“Lockheed”) (File Nos. SAT-T/C-20000323-00078, *et al*).² The said LRT Reconsideration Petition referenced a number of issues related to the sale of Comsat assets by Lockheed. As outlined in the Petition to Deny, certain of the issues raised in the Reconsideration Petition are related to the issues under consideration in the current proceeding.

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”).

² As a result of the merger, Comsat originally became a wholly owned subsidiary of Lockheed Martin Global Telecommunications (“LMGT”). In December 2001, Lockheed announced its plan to close LMGT and liquidate Comsat. The proposed sale of Comsat World Systems to Intelsat, Ltd. (“Intelsat”) at issue herein is a result of the Comsat liquidation.

1. Issues Raised By Other Parties

LRT has reviewed the various comments submitted in this proceeding, i.e. those submitted by AT&T Corp, (“ATT”), WorldCom, Inc. (“WorldCom”) and Sprint Communications Company L.P. (“Sprint”)³ and Verestar, Inc. (“Verestar”). As outlined below, the primary concerns of the foregoing parties, as detailed in their comments, is to seek appropriate safeguards through the establishment of specific conditions imposed by the Commission on any assignment grants to assure that Intelsat will observe certain structural and rate regulation policies.

Specifically, the parties seek the adoption of the following policies and/or protections:

1. The mandated acceptance by Intelsat of the price reductions and price caps previously accepted by Comsat set forth in the *Alternative Rate Regulation Order* (14 FCC Rcd. at 3071-77) as follows:
 - reduction of prices for switched voice services by the greater of (a) four percent per year or (b) the amount of price reductions for such services on competitive routes; and
 - no future price increases for private line services or occasional-use video services
2. The adoption of a condition requiring that for the period extending to the termination of the committed terms of Intelsat circuits that are currently purchased through Comsat, the prices charged by the combined Intelsat/Comsat for such circuits will be at the same non-discriminatory levels that would have been available directly from Intelsat (i.e. the Intelsat Utilization Charges) at the time the circuits were originally purchased.
3. The adoption of a condition requiring that with respect to new space segment capacity sold by the merged Intelsat-Comsat, the services offered shall be the same as those offered by Intelsat throughout its system, and the wholesale prices offered by Intelsat to U.S. customers shall be:
 - the same as those offered to other non Intelsat affiliated customers for capacity on the same satellite(s) and
 - no higher than those offered to Intelsat’s own downstream operations
 - the existing incentive-based regulation of Comsat rates shall apply to the prices of the merged Intelsat/Comsat, using current Intelsat prices as the base prices
4. The adoption of a condition requiring that the former Comsat World Systems following its purchase by Intelsat will operate as a separately organized entity independent from Intelsat

³ The WorldCom and Sprint comments were filed jointly (“W/S comments”).

5. The adoption of a condition requiring that the former Comsat World Systems following purchase by Intelsat will provide space capacity to customers on a common carrier basis.
6. The adoption of a condition requiring that Intelsat will provide space capacity in accordance with tariff schedules as filed with the Commission.

LRT is of the opinion that the rationale offered by the parties in support of the foregoing proposals is sound, and the conditions as outlined are quite appropriate in view of the serious issues raised.

As correctly observed by ATT in its Petition to Deny, a series of policies and rules adopted by the Commission in carrying out the terms of the ORBIT Act were premised on the fundamental assumption that Comsat would continue function as an independent, regulated retailer of Intelsat space segment capacity in the United States. Now, as a result of the proposed transaction entered into by Intelsat and Lockheed,⁴ Comsat will in essence be merged into Intelsat and, as a result, Intelsat itself will become a retail distributor of its own space segment capacity in the U.S.

This transaction in effect turns the former Intelsat-Comsat wholesaler-retailer relationship on its head, and produces the prospect of possible anti-competitive conduct on the part of the expanded Intelsat company. The conditions proposed in the W/S Comments and the ATT Petition address the most serious of the potential anti-competitive issues which must be confronted as a result of the Intelsat-Comsat transaction.

For the reasons stated herein and in a supplemental pleading, LRT favors the adoption of the conditions proposed by ATT, WorldCom, Sprint and Verestar to be adopted in association with any order granting the requested assignment of CWS licenses to Intelsat.

⁴ LRT restates its request to have the opportunity to review the Lockheed-Comsat purchase and sale agreement upon which this proceeding is based. Earlier, on two separate occasions, in emails to the International Bureau staff, LRT requested that Lockheed and/or Intelsat be required to file a full copy of their purchase and sale agreement with the Commission for inspection by the staff and the public. To date, LRT believes that no such directive has been issued by the staff to Intelsat and Lockheed. LRT further is of the understanding that the Commission staff has not reviewed the said agreement. LRT does not believe that the Commission can properly take action on the pending Application pursuant to its delegated authority without undertaking a comprehensive review and analysis of the said purchase and sale agreement, and making it available for inspection by interested members of the public.

2. Issues Raised by LRT

In its Petition, LRT raised a series of what it views as very serious issues which call into question the legal rights of Intelsat and Lockheed to enter the subject purchase and sale transaction and to file the pending Application with the Commission.

A. The Application is Defective and Should be Dismissed

LRT remains of the opinion that the Application as submitted is defective on its face. As outlined in detail in the Petition, 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. As noted by LRT, 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).⁵

As outlined in detail in the Petition, Lockheed and Comsat included a number of representations in the Application which, based on evidence filed with the Commission, are untrue. These misrepresentations are viewed by LRT as constituting an effort by these companies to conceal basic and vital facts from the Commission staff and, most importantly, from all parties to the proceeding, including ATT, WorldCom, Sprint and Verestar, as well as other competitors, customers, public interest groups and governmental institutions- that may have been and may continue to be interested in, and/or may be directly or indirectly affected by, the proposed transaction and this proceeding.

Stated simply, as presented by LRT, 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 the Comsat-Lockheed merger 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

⁵ SEC File Number: 333-87064.

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.

In view of the foregoing, LRT remains of the opinion that the subject Application should be dismissed and returned to the parties as defective. The parties would then be free to refile the Application, including therein the necessary amendments so as to present all information relevant to the legal, technical, financial and character qualification requirements of assignors and assignees under the Commission's rules. Once the amended Application is refiled, the Commission will be able to determine what additional actions should be properly required, including, but not limited to, a full evidentiary hearing and/or investigation of Lockheed/Comsat and, where necessary, Intelsat.⁶

**B. In the Alternative, the Application Should be Noticed for Hearing or Investigation
Prior to Conducting a Supplementary Round of Comments**

In the event that the Commission does not dismiss the Application as defective, LRT requests that the agency immediately notice a full evidentiary hearing and/or investigation of Lockheed/Comsat and, where necessary, Intelsat, including, in addition to issues related to relevant legal, technical, financial and character qualifications, matters concerning the approval of the Lockheed-Intelsat purchase and sale agreement, including a full investigation of board authorization of the transaction and joint board memberships of the two companies.

Given the evidence that has heretofore been placed upon the record in other proceedings before the Commission, issues posed for hearing/investigation should be premised on the assumption that Comsat and Lockheed have violated the Commission's disclosure rules, have submitted false information to the Commission⁷ and have therefore violated the basic character qualifications required of licensees. All parties in

⁶ While Intelsat was not a party to various character issues raised against Comsat/Lockheed by LRT in the other referenced proceedings, the fact remains that Lockheed currently owns 24% of the equity of Intelsat, has had its and Comsat's current and past senior officials sitting on the Board of Intelsat (the president of Lockheed Martin Global Telecommunications served as Intelsat chairman and at least one former Comsat board member sits on the Intelsat board.) Such matters raise serious questions concerning the independent decision-making authority of Intelsat, which should be investigated by the staff.

⁷ Lockheed has heretofore admitted filing false information with the Commission in an effort to misrepresent the licensee status of Comsat's Florida subsidiary.

this proceeding, as well as other interested parties, should be permitted to participate in the hearing/investigation.

Following the completion of the hearing/investigation, the Commission should conduct a further round of supplementary comments before the staff proceeds with its review of the Application.

**C. In the Alternative, the Commission Should Adopt a Series of Conditions
in Connection with any Grants to Safeguard the Public Interest**

In the event that the Commission determines that sufficient grounds exist to approve the Application, such approval should be made subject to the following conditions:

1. The Commission shall adopt the Protective Orders heretofore submitted in connection with the Petition.
2. The Commission shall adopt an order requiring Lockheed to pay over to the Commission⁸ all net proceeds paid by Intelsat for its purchase of Comsat World Systems for the purpose of establishing a fund (Digital Conversion Fund) to assist through loans and grants the financing of the digital conversion of small market, minority owned and public television stations and cable systems, lacking ready access to capital for such technical upgrades. The term “net proceeds” shall be deemed to mean \$160 million, constituting the gross sale proceeds to be paid to Lockheed by Intelsat for its purchase of Comsat World Systems, less certain costs and expenses, including Lockheed’s transaction costs.
3. The Commission shall adopt an order requiring Lockheed to pay over to the Digital Conversion Fund⁹ any and all proceeds realized from the following sales of Comsat assets: (a) the sale of Comsat Mobile Communications assets and shares Inmarsat, Ltd. to Telenor, ASA ; (b) the sale of all Comsat International division assets ; (c) the sale of Intelsat shares sold by Lockheed in connection with the Intelsat ipo or to any

⁸ The payment by Lockheed shall constitute partial repayment of the billions of dollars in proceeds realized by Comsat over a 30 year period from its monopoly over the sale of Intelsat spaces segment capacity in the United States.

⁹ See footnote 7

third party purchaser in other sale(s); (d)) the sale of Inmarsat shares sold by Lockheed in connection with the Inmarsat ipo or to any third party purchaser in other sale(s); and (e) any consideration in cash or otherwise (including inter-company charges/credits for transfers of Comsat assets to other Lockheed divisions) realized from the sale or other disposition or transfer of any other Comsat assets not included within paragraphs (2) and (3) (a) through (d) above.

4. The Commission shall adopt an order requiring Lockheed to pay the expenses and costs of the parties to this proceeding.
5. The Commission shall adopt an order requiring Lockheed to undertake the following actions:
 - Lockheed shall covenant that so long as it is an FCC licensee, it shall immediately report to the Commission any notices of government investigations, inquiries, indictments or other official actions involving allegations of fraud, price fixing or manipulation, misrepresentation, abuse of process, obstruction of justice, violation of Federal False Claims Act, activities in restraint of trade or violations of antitrust statutes.
 - Separately, Lockheed shall covenant to comply with all FCC rules, including the ex parte rules, and agree and accept fines of \$50,000 per violation.
 - Lockheed shall execute an appropriate Consent Decree and Compliance Plan as submitted separately by LRT in this proceeding.¹⁰
6. The Commission shall adopt an order requiring Intelsat and Lockheed to refrain from the broadcast, cable and/or closed circuit distribution of video programming deemed to be indecent or obscene or foreclosed to viewing by persons under the age of 18 by the rating system of the Motion Picture Association of America, except through use of a lockbox (as defined in Title VI of the Communications Act and 47 CFR Section 76.11) or similar signal blocking technology.¹¹

¹⁰ LRT is this date submitting an Administrative Dispute Resolution petition separately for consideration by the parties to this proceeding.

¹¹ This condition is made necessary by virtue of the fact that Comsat operated a business for over a decade, which distributed films to hotels throughout the U.S. in direct violation of the public interest standards of the Communications Satellite Act. The adoption of the proposed condition will assure that the successor in interest to Comsat does not stray into the types of illegal and immoral activities which unfortunately were authorized for an extended period of time by the former Comsat senior management.

3. Proposed Administrative Dispute Resolution

Given the type of issues, which have been raised by the parties in this proceeding, LRT has come to the position that the most appropriate way to proceed at this juncture would be to explore a modified type of Administrative Dispute Resolution. Such a process can allow the expedited resolution of the issues and avoid a series of administrative and possible judicial reviews of complex issues that have been raised to date. For this purpose, LRT is submitting a separate filing in this proceeding, outlining proposed terms of settlement and proposing an expeditious approach to resolving the key issues which have been raised.

The Commission heretofore has adopted a policy that supports and encourages the use of alternative dispute resolution procedures in its administrative proceedings, as well as proceedings in which the Commission is a party. These procedures include the use of regulatory negotiation in Commission rulemaking matters, as authorized under the Administrative Dispute Resolution Act and Negotiated Rulemaking Act. Such procedures have been adopted in accordance with the Commission's policy to encourage the fullest possible use of alternative dispute resolution procedures in its administrative proceedings

LRT is of the opinion that the current proceeding involves a series of matters, which lend themselves to expedited settlement among the concerned parties. Assuming appropriate resolutions are reached, such a process will permit this proceeding to be concluded at an early date, and allow all related matters to be concluded as well. This is the express objective, which has been set by the Commission in adopting its Administrative Dispute Resolution procedures.

5. National Security Concerns

As outlined in its Petition, LRT remains of the opinion 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.

As LRT outlined in its initial filing, the licenses and authorizations at issue were originally issued to Comsat in its capacity as a US Government sponsored enterprise. From the time of 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.

LRT is concerned that with the assignment of the CWS licenses to Intelsat, a non-US corporate entity controlled by non-US interests (including foreign government shareholders), such immediate and wide-ranging coordination with US law enforcement and intelligence agencies, including the newly proposed Homeland Security Department, will not be possible. These critical matters must be properly addressed by the Applicants and reviewed and investigated by the Commission.

This having been said, the regulatory process being followed in this proceeding has required LRT to submit its reply comments on the national security issues (and others) without having the opportunity to review the Applicants' responses to the concerns raised by LRT in its earlier submission. Such a limited procedure, in the view of LRT, is not in the public interest as it necessarily restricts the ability of LRT and others to review and comment upon the Applicants' responses on matters of national security, as well as other vital issues. This restricted procedure also denies the due process rights of LRT and the other participants.

Given this situation, LRT respectfully requests that the Commission provide all parties the opportunity to submit additional comments in response to the Applicant's filings made in this second comment round. The comments should be submitted within 14 days of the Commission's notice. Only in this way will all parties be able to properly review the Applicants' responses, and provide the Commission with detailed comments on all key issues, which will be useful to the staff in making their recommendations to the Commission.

If interested parties are not allowed to submit a third round of comments as proposed herein, the findings and recommendations ultimately forming the basis of a report and order will be found to be fatally flawed. Unless the procedures are altered as requested, LRT and other concerned parties will be denied the opportunity to properly and completely

review, analyze and comment upon the Applicants' responses dealing with national security and other vital issues, a number of which have become issues of increasing importance and the highest priority since the tragic events of September 11.

Furthermore, as noted, 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. Rather, access to data will be through a company, which counts among its key owners, a number of sovereign governments. This must raise 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, LRT remains of the opinion that the Commission and the Executive Branch should establish a special task force, which would involve all appropriate law enforcement and intelligence agencies and departments to review all aspects of this the proposed transaction which necessarily involve national security issues.

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. For this reason, consideration should be given to establishing a trust or other structure which would assure access to CWS facilities by US Government law enforcement and intelligence agencies.

LRT recognizes that these considerations are matters reserved to the appropriate US Government agencies and departments. LRT therefore reserves judgment pending its review of a complete analysis by the Commission of the national security concerns at issue in this transaction.

6. 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 for US customers.

However, LRT remains concerned that neither Comsat nor Lockheed has provided any explanation as to why following just over one year of ownership and operation of Comsat, the decision has been made by Lockheed to liquidate the company. Not only has Lockheed/Comsat failed to address this key question, but more importantly, Comsat and Lockheed have neglected to confront the related issue- the failure of the transaction to comply with the strict terms of the Orbit Act and the intent of Congress in passing the said legislation.

As outlined in its initial Petition, LRT is concerned that the actions taken by Lockheed in failing to properly invest resources in Comsat to restore it to its previous position of leadership in the global satellite industry constituted a direct violation of undertakings made to Congress. As documented in the Congressional Record¹², Lockheed, in seeking Congressional approval to merge with Comsat, made specific commitments to provide necessary support- both in terms of financial investment and management expertise- to rebuild and reinvigorate Comsat, which had fallen upon difficult, if not desperate, times¹³. Yet, as noted earlier by LRT, literally within days of completing the merger, Lockheed began to strip Comsat of its assets¹⁴, selling them to competing carriers. And, of course, in December 2001, Lockheed advanced from the gradual sale of assets approach to the wholesale liquidation of the corporation, including its stock interests in Intelsat and Inmarsat.

Given these facts, there must be a full investigation into the circumstances surrounding the Lockheed-Comsat merger and the representations made by the corporations to Congress and the Commission, as well as the subsequent actions undertaken by Lockheed and its management to fully liquidate its interest in Comsat.

¹² Congressional Record: March 2, 2000 (Senate)] [Page S1155]

¹³ At the time of the entering its merger agreement with Lockheed, Comsat was suffering increasing operational losses and was completing the sale of all “non-core” assets to continue in operation. It had also reduced its quarterly dividend to \$.05, which payments had to be made from retained earnings as operating revenues continued to fall.

¹⁴ The initial Comsat liquidation transaction involved the sale of one-third of Comsat’s stock interest in Inmarsat, Ltd. which Lockheed sold to Telenor, ASA for \$165 million. This was followed by other asset sales including the “give-away” transaction involving BelCom, Inc. (“BelCom”), a pioneering telecommunications venture in the former Soviet Union in which LRT members were involved. BelCom was reportedly sold for \$1 to a long term supplier/contractor of Lockheed in an transaction which provided the purchaser a special commission payment of \$3 million. This asset give-away apparently reflected the gross failures of Comsat/Intelsat management to run the business and their over-riding motivation to avoid future liabilities to LRT and possibly others by liquidating their ownership interest in BelCom.

7. 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 to the Petition.

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 continuing compliance with the rules and regulations of the Commission, as well as all federal applicable statutes.

8. Conclusion

LRT continues to view this proceeding 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. Consequently, the pleading cycle must be altered.

In any event, LRT requests that the issues related to the technical, legal, financial and character qualifications of the parties be noticed for evidentiary hearing or investigation before further actions are taken with respect to the Application.

Further, in the interest of due process, the Commission is respectfully requested to extend the pleading cycle in this proceeding to allow all interested parties the opportunity to comment upon any joint or independent filing made by Lockheed/Comsat and Intelsat in this second or reply comment round. Only in this way will the parties be able to fully review, analyze and comment upon the Applicants' filing in response to the various petitions and other pleadings submitted by the parties to date.

LRT also requests the appointment of a joint department/agency task force to review and report upon the national security issues, which are necessarily involved as

result of the proposed assignment of licenses to Intelsat, a foreign corporation which is in part controlled by foreign governments.

LRT requests that the issuance of any orders permitting the assignment of the subject licenses to Intelsat be made subject to the Protective Orders submitted as Exhibit A to the Petition.

Finally, LRT observes that it is proceeding through the submission of a second filing to encourage the utilization of Administrative Dispute Resolution procedures to permit the parties hereto to reach a proper and expedited settlement of the various matters at issue which have been raised to date.

Respectfully submitted,

Litigation Recovery Trust
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By _____
William L. Whitely
Trustee

June 7, 2002

CERTIFICATE OF SERVICE

**I, William L. Whitely, hereby certify that I have this 7th day of June, 2002
forwarded the foregoing Reply Comments via Email, Federal Express or US Mail,
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