

Received

AUG 27 2001

Before the
Federal Communications Commission

Washington, D. C. 20554

RECEIVED

AUG 23 2001

FCC MAIL ROOM

File No. SES- ASG20010504-
00896

Satellite Engineering Branch
International Bureau

In the Matter of

Lockheed Martin Global Telecommunications,
Comsat Corporation, and Comsat General
Corporation, Assignor

And

Telenor Satellite Mobile Services, Inc.
And Telenor Satellite Inc., Assignee

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

SUPPLEMENT TO PETITION TO DENY

Litigation Recovery Trust ("Petitioner" or "LRT"), on behalf of its members and its associated entities, hereby submits this Supplement To Petition To Deny ("Supplement") addressing critical issues related to the above referenced applications filed jointly by Lockheed Martin Global Telecommunications ("LMGT"), Comsat Corporation ("Comsat") and Comsat General Corporation, as Assignor and Telenor Satellite Mobile Services Inc. and Telenor Satellite Inc., as Assignee.

Heretofore, Petitioner submitted a Provisional Petition to Deny and Petition for Protective Orders ("Petition") and Reply to Opposition to Petition to Deny ("Reply"). Additionally, Petitioner submitted a Petition for Additional Issue for Review ("Review 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*) related to certain of the issues under consideration herein. ¹

¹ As a result of the merger, Comsat became a wholly owned subsidiary of LMGT.

1. Introduction

On Friday, August 17, 2000, an article appeared in the *Wall Street Journal* ("WSJ") which addressed a number of issues central to the current proceeding. LRT believes that it is critical that the Commission be provided access to this information. In addition, consideration of this and other data has occasioned a modification in LRT's basic position. As a result, LRT is proposing herein a suggested procedure to be followed with respect to this proceeding.

2. Telekom Complications

In a feature "Heard on the Street" story carried in Friday's WSJ, attention was focused on the changing fortunes at Deutsche Telecom AG, a company that is 43% owned by the German Government. The story titled, "Deutsche Telecom, Once a German Sensation, Falls Hard," provides an analysis of the poor stock performance of Telekom, which ranks as the largest full-service telephone company in Europe. The stock is currently selling at a level approaching the 1996 opening issue price originally paid by purchasers at the company's initial public offering.

The WSJ reports that the company's stock is in "free fall," noting that:

Since hitting a high of 104 euros (\$94.93) on March 6, 2000, Telekom shares in Germany- which also trade in the U.S. in the form of depository shares- have fallen more than 80% to 18.08 euros yesterday. The sale of a huge block of the company's shares last week spooked investors again. The subsequent sell off shaved a fifth off Telekom's market value in less than a week. Wall Street Journal, Aug. 17, 2000, p. C1.

The paper stated that the stock was being affected by generally poor market conditions plus the impact of the so-called "overhang" of 532 million shares of the company's common stock, representing 12.6% of its 4.2 billion shares outstanding. The overhang shares were issued in connection with Telekom's purchase in June of VoiceStream Wireless of Bellevue, Washington for \$35 billion in cash and stock. These shares are expected to be sold by former

VoiceStream shareholders into the market in September and December.² The VoiceStream purchase transaction was approved by the Commission following a detailed review to determine compliance with 47 USC § 310(b)³.

With the VoiceStream acquisition, Telekom became one of the four largest wireless companies in the world. The company also operates Europe's largest Internet provider. The company had sales of 40 billion euros last year, and has a market capitalization of 75.6 billion euros based on the closing share price on August 16.

With its apparent reversal of fortune, Telekom is looking for ways to improve its share price. However, on Wednesday, August 15, VoiceStream posted quarterly performance figures below estimates. This in turn raised the possible need for Telekom to issue a profit warning with respect to the parent company's overall performance.

Based on the above factors, the WSJ observed that:

With VoiceStream already a major disappointment and Telekom shares falling, the next supervisory board meeting, which is scheduled for the end of the month, will be the toughest [Telekom President Ron Sommer] ever faced. Wall Street Journal, August 17, 2001, p. C2

The concluding paragraph of the story is most instructive and troubling:

A senior official of the German government, which still owns 43% of [Telekom] said: "The next supervisory board meeting will be critical." Ibid.

With a 43% ownership stake in Telekom, the German government is obviously vitally concerned with the operating problems being experienced by the company. This concern is reflected in the above statement of an unnamed official of the German government. Perhaps the national budget estimates include a stipulated dividend, going concern or market capital asset valuation, or other debt or equity return from Telekom, which is now endangered by

² Under terms of the acquisition, VoiceStream agreed to a restriction on the amount of Telekom shares its former shareholders can sell between June and December 2001. The first sales period begins on September 1 and the second on December 1.

³ See *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, FCC No. 01-142, IB Docket No. 00-187

recent events. Such a reversal can constitute a significant problem for the German government.

However, unlike private sector major shareholders of operating telecom companies, a government has many additional policy options at its disposal to deal with such problems. It can, for example, order increased spending for telecom equipment and services to be provided by its telecom company, artificially boosting operating revenues. Further, the government can alter regulations so as to reduce required capital outlays or increase profits through rate and other changes, again producing higher earnings and rates of return. A government owner can also make debt financing available at subsidized rates or postpone scheduled debt repayments, again producing increased revenues. The forgoing and other steps can be taken by any government to help improve the performance of the privatized telecom company.

The above considerations underscore the problems, which can be encountered where a government is permitted to acquire a substantial interest in a private telecommunications company. As outlined in detail in the LRT Petition and Reply pleadings filed in this proceeding, many critics, including Senator Ernest Hollings (D-SC) and Representative Billy Tauzin (R-LA), have spoken out against the dangers inherent in government ownership of telecommunications companies. Each has cited many dangers inherent in such government incursions into private enterprise. Of critical concern is the fact that such companies have ready access to unlimited government resources, giving them unfair operating advantages over private sector competitors.

3. Telenor-Comsat Complications

In the present proceeding, the FCC is reviewing the assignment of license applications, which would place Telenor SA, a company owned by the Kingdom of Norway, in control of a series mobile satellite and other US licenses, originally granted to Comsat. Such a transaction would send US telecommunications policy down a truly perilous road, in essence allowing total foreign ownership of US licenses, including control by foreign countries. Once this line

is breached, it is not clear that any type of meaningful demarcation will ever be able to be re-established.⁴

Historically, fundamental US policy has strongly favored international privatization of telecommunications facilities. Such a position is consistent with free market goals and objectives. It also seeks to assure that control of vital communications links is placed in the private sector, as opposed to government entities. Finally, the policy is premised on the stated objective of moving global telecommunications to a level, free market playing field, which will utilize worldwide competition to expand facilities and services, while seeking to drive down costs and expand benefits to consumers.

None of the foregoing will be achieved through the sale of the Comsat CMC division to Telenor. Based on information provided by Telenor counsel, LRT has concluded that 100% of the stock of the company is owned by non-US interests.⁵ Further, 79% of the company's stock is owned directly by the Norwegian government. Should the Commission approve the pending assignment applications, such a grant would establish the precedent that US licenses can be completely owned and controlled by foreign interests, including foreign governments. For a myriad of reasons, this should not, and simply cannot, be permitted.

All recognize that licenses issued by the Commission are national assets. By federal law, they are intended for the use and betterment of US citizens. The senior management of Comsat, a government sponsored enterprise founded by Act of Congress, should be acutely sensitive to the goals and requirements of US national policy. Yet, as noted, the proposed asset sale under review violates these fundamental objectives.

⁴ One can imagine the possible disastrous diplomatic scenarios that could follow as efforts are undertaken by the US State Department and FCC to explain why one country's proposal to control US licensed facilities is more or less worthy than a competing proposal of another country. Clearly, the 25% cap set forth in § 310(b) was meant to avoid just such problems.

⁵ LRT counsel has on four different occasions requested Telenor counsel to provide a report on the percentages of stock ownership of Telenor by various nations. Counsel has refused to provide any data beyond that submitted to the Commission. This has lead LRT to conclude that 100% of the stock is owned by non US citizens. Telenor counsel has been informed that LRT is assuming US interests own no Telenor stock. Counsel has undertaken no action to inform LRT that its assumption is incorrect. Until information to the contrary is provided, LRT is therefore maintaining its assumption that Telenor has no US shareholders.

Comsat has offered no explanation as to its reasons for disposing of the CMC assets, let alone its selection of Telenor as the proposed buyer. At the very least, Comsat should be required to provide a full explanation of the purposes underlying this proposed transaction.

It is possible, though unlikely, that Comsat is conducting an asset sale to raise operating capital⁶ to fund its continuing operations. Comsat is presently owned by Lockheed, the nation's largest defense contractor, which enjoys annual revenues in excess of \$30 billion. Comsat therefore should have ready access to capital it requires.⁷

Comsat should initially be required to establish a case for disposing of its mobile satellite division. Again, Comsat is not just any satellite operating company. It was founded by the Congress to lead the country into the satellite age. It should therefore remain the responsibility of Comsat to set standards for achievement for the satellite industry. Indeed, Comsat pioneered mobile satellite communications through its sponsorship of Inmarsat. Comsat's responsibility as an industry leader goes beyond the usual profit and loss concerns common to private sector companies. Mobile satellite facilities continue and will remain a principle national and international communications technology, and hence, unless good cause can be demonstrated, the Commission and the Congress should continue to expect that Comsat will remain a part of this important aspect of the satellite industry.

Furthermore, if Comsat were to be permitted to sell CMC, any such sale should be conducted in a way to assure full compliance with Commission policy and regulations. Comsat, of all

⁶ It is observed that Lockheed on at least three occasions over the last 12 months has stated publicly its intention to raise additional operating capital for its telecommunications business through an initial public offering of up to 50% of LMGT stock or by having LMGT enter transactions with one or more strategic operating partners. No such transactions have occurred, and Lockheed has been noticeably silent on this subject over the last six months. It is possible that the expansion moves were the initiative of Louis Hughes, Lockheed's former president, who was hired away from General Motors and then left Lockheed after a mere six months on the job, citing personal reasons and receiving some \$8 million in severance pay for his trouble. It is noted that Comsat continues to perform poorly, leaving LMGT with the problem of finding capital to meet the business plan for the combined operation.

⁷ In LRT's earlier filings in this proceeding, references were included to the views of various Congressmen in passing the ORBIT Act regarding their expectation that Lockheed would provide necessary working capital resources and management talent to assist in restoring Comsat to a position of prominence similar to that it previously enjoyed as the founding architect of international satellite communications.

licensees, should not be seeking extraordinary policy determinations or waivers of rules established to protect and secure licensed facilities as national assets. Comsat, a US sponsored enterprise, should not be proposing the assignment of licenses to a company controlled by a foreign government. If Comsat does not see fit to comply with the 25% ownership cap defined in Section 310(b), why should any private sector licensee be expected to observe the limitation.

Clearly, there are numerous operating companies in the mobile satellite industry. If Comsat is to be permitted to sell CMC, it should only be accomplished in the context of an open bidding process, involving pre-qualified participants, where any resulting transactions would comply fully with the Commission's rules, regulations and policies, including Section 310(b).

Finally, in the event Comsat is permitted to sell CMC, it is LRT's position, as outlined in detail in the Reply and other filings, that all revenues received by Comsat from the transaction should be ordered to be paid over to the Commission and utilized to establish a fund to assist the financing of the digital conversion of public, minority owned and small market television stations and cable systems⁸.

Comsat's primary revenues realized between 1962 and 2000 were derived from the monopoly established by Congress over the sale by Comsat of INTELSAT facilities to carriers in the US. These proceeds, which totaled in the billions of dollars over the 30 plus year period, were in part utilized by Comsat to purchase its ownership interests in INTELSAT and Inmarsat.

⁸ There is a critical need for such funding support as broadcast stations and cable systems face the immediate need to upgrade their production and transmission facilities to accommodate the new digital standards. Lacking ready sources of support for such capital expenditures, broadcasters and cable operators are being forced to explore alternate sources of funding. Just recently, for example, WLIW, the independent public television station serving Long Island, New York decided to merge with WNET, New York City's public station. In press reports, WLIW cited the lack of capital resources to underwrite its digital upgrade as a primary reason supporting its decision to merge with WNET. It is noted that WLIW received only 8 seats on the 45 person WNET board, thus ending an independent TV voice for Long Island. Some critics have said that WLIW was "sold down the East River." Other public television stations not able to entertain such merger proposals are faced with a limited number of funding options. Many small market TV and minority owned TV stations and cable systems face similar funding problems. The dedication of the windfall profits received by Comsat from the privatization of INTELSAT and Inmarsat and other asset sales offers one ready option to provide a source of funding to aid the digital conversion process. It is estimated that Comsat will realize between \$1.5 and \$2.5 billion in windfall profits from INTELSAT and Inmarsat privatizations. It is also estimated that over the last 30 years, Comsat collected in excess of \$19 billion in gross revenues directly derived from its INTELSAT monopoly sales proceeds.

LRT therefore contends that any windfall proceeds realized by Comsat from the privatization of INTELSAT and Inmarsat should be returned to the US Treasury as part repayment of the monopoly proceeds, which the corporation has received over the last three decades. Clearly, CMC is an integral part of the Inmarsat business and therefore, any profits realized by Comsat from the sale of CMC should be ordered to be paid over to the US Treasury in part repayment of monopoly proceeds as has been proposed by LRT.⁹

4. Telenor-Comsat Transaction Should Not Be Approved

LRT has come to the position that the proposed sale of CMC to Telenor cannot be permitted. Given the control reserved to the Kingdom of Norway, the complications to be expected from such a transaction will be far worse than those currently being experienced by Telekom as outlined herein.

In short, US policy cannot support the transfer of operating licenses to foreign owned and foreign country controlled companies.

Previously, LRT has sought the opportunity to meet with counsel to both Telenor and Comsat to discuss possible ways to address the complex issues raised by this transaction, but neither party has agreed to such a meeting.

Given this situation, LRT is today issuing letters to counsel to Telenor and Comsat requesting that they voluntarily withdraw their pending applications no later than September 6th. If this is not accomplished in accordance with the suggested schedule, LRT respectfully requests that the Commission immediately consult with the appropriate members of the Senate and House Commerce Committees concerning the proposed transaction to review the serious issues of

⁹ Comsat recently marked with some fanfare the 25th anniversary of its Inmarsat ground station in Southbury, Connecticut. Since CMC has been in operation for over 25 years, it is assumed that its assets are fully amortized. Therefore, it can be expected that the revenues from any sale of CMC will constitute profits to the corporation, and should be paid over to the Commission.

national policy as raised with respect to compliance with Section 310(b) and related matters. LRT also intends to review these matters and may petition the Senate and House Commerce Committees directly to conduct a special inquiry, so that members of each committee will be fully knowledgeable concerning the pending applications, and will be able to offer their views to the Commission.

5. Conclusion

LRT respectfully requests that the Commission postpone final action on the pending applications to allow the Applicants to consider the proposed voluntary dismissal of their joint filings or, in the alternative, to provide sufficient time for the accomplishment of the Congressional review process outlined above.

Respectfully submitted,

Litigation Recovery Trust

By _____

William L. Whitely
515 Madison Avenue
New York, NY 10022-5403
212-752-5566
212-754-2110
email: litigationrecovtrust@email.com

August 21, 2001

CERTIFICATE OF SERVICE

I, William L. Whitely, hereby certify that I have this 22nd day of August, 2001 directed that the foregoing SUPPLEMENT TO PETITION TO DENY via Fax, Federal Express or US Mail, postage prepaid to the following:

George Kleinfeld, Esq.
Clifford Chance Rogers & Wells
The William Rogers Building
2001 K Street NW
Washington, DC 20006

Attorneys for Telenor

Larry Secrest, Esq.
Rosemary Harold, Esq.
Wiley, Rein & Fielding
1776 K Street
Washington, DC 20006

Attorneys for Comsat

William L. Whitely

515 Madison Avenue
New York, New York 10022
Phone: 212-752-5566
Fax: 212 754-2110

**Litigation Recovery
Trust**

Fax

To: George Kleinfeld

From: William L. Whitely

Fax: 202-912-6000

Date: August 22, 2001

To: Larry Secrest

Pages: 11

Fax: 202-719-7049

CC:

Urgent For Review Please Comment Please Reply Please Recycle

•Comments:

Attached please find a copy of LRT's SUPPLEMENT TO PETITION TO DENY.

515 Madison Avenue
New York, New York 10022
Phone: 212-752-5566
Fax: 212 754-2110

**Litigation Recovery
Trust**

Fax

To: George Kleinfeld

From: William L. Whitely

Fax: 202-912-6000

Date: August 22, 2001

To: Larry Secrest

Pages: 7

Fax: 202-719-7049

CC:

Urgent For Review Please Comment Please Reply Please Recycle

•Comments:

Attached please find a copy of LRT's SUPPLEMENT TO PETITION TO DENY.