

Received

AUG 27 2001

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C. 20554 RECEIVED

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

AUG 23 2001

FCC MAIL ROOM

File No. SES- ASG20010504-  
00896

**MOTION FOR WAIVER TO ACCEPT PLEADING**

Litigation Recovery Trust ("Petitioner" or "LRT"), on behalf of its members and its associated entities, and based on good cause, hereby submits the instant MOTION FOR WAIVER TO ACCEPT PLEADING ("LRT Motion").

In accordance with the Commission's announced pleading cycle, LRT previously filed on a timely basis a Provisional Petition to Deny ("Petition") and a Reply to Opposition to Petition to Deny ("Reply") in this proceeding. Concurrent with this Motion, LRT is filing a pleading denominated, Supplement to Petition to Deny ("Supplement"). LRT submits the instant Motion seeking a waiver of the Commission's rules to accept the Supplement although filed following the due date for the acceptance of responsive pleadings.

LRT is submitting the instant LRT Motion, in support of which, LRT states as follows:

1. Heretofore, LRT submitted in a timely fashion its Petition and Reply pleadings on a timely basis in this proceeding.
2. Following the filing of its Petition and Reply, LRT, as a result of its continuing investigation and research concerning the issues involved in this proceeding, discovered certain recently released information in the *Wall Street Journal* (“WSJ”) concerning Deutsche Telekom.
3. The contents of the WSJ report was found to be directly relevant to issues and arguments raised in the Petition and Reply and 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, the Applicants herein, in their Opposition pleading.
4. The contents of the WSJ report addressed critical matters concerning the stock purchase transaction between Deutsche Telekom and VoiceStream Wireless<sup>1</sup>, which has been cited favorably by the Applicants in support of their applications.
5. LRT is of the considered opinion that the information contained in the WSJ report, as outlined in the Supplement, should be reviewed and considered by the Commission in the interest of the fair and efficient administration of justice as it determines whether it should approve the applications, including making necessary findings pursuant to Section 310(b) of the Communications Act of 1934, as amended (47 USC § 310(b)) (herein referred to a “Section 310(b)”).

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<sup>1</sup> 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

6. In addition, LRT has concluded that it is critical to transmit all such available information in the Supplement to permit the Commission to complete a full and proper consideration of the matters at issue in this proceeding.
7. The filing of the Supplement has necessitated the submission of this waiver request for good cause.
8. The Commission has set forth a definitive statement regarding its policy with respect to the granting of rule waivers as follows:

Generally, the Commission's rules may be waived for good cause shown. As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. *In re Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 Citizens Utilities Company US WEST Communications, Inc. Joint Petition for Waiver*, CC Docket No. 94-129 ORDER Released: July 14, 2000 ¶4 14 FCC Rcd \_\_\_\_\_ (2000) (hereinafter "*Citizens /US West Joint Waiver*")

9. In the instant case, LRT believes that its actions clearly comply with the Commission's established policy for granting waivers based on a showing of good cause.
10. The WSJ report deals directly with issues impacting the Commission's consideration of the Applicants' pending grant requests including making necessary policy determinations pursuant to Section 310(b) to permit the assignment of licenses to a company where as much as 100% of the issued stock is owned by non US interests including a 79% interest owned directly by the Kingdom of Norway.

11. The Commission's consideration of the Section 310(b) policy compliance issues related to the applications presents a matter of first impression and involves the determination of a central policy question.
12. In essence, the Applicants have requested the Commission to permit the assignment of the Comsat mobile satellite licenses to Telenor, notwithstanding the fact that the company is controlled by a foreign government and all of its stock is held by non US shareholders.
13. The facts, as established by LRT and presented in the Petition, Reply and Supplement, address the critical matters at issue in this proceeding, involving a fundamental change in policy as affecting the ownership and control of licensed communications facilities within the US.
14. LRT fully believes that it is in the public interest to assure that the Commission is provided full access to all available information related to the serious matters at issue in this proceeding.
15. LRT contends that, given the unique nature of the issues under review in this proceeding, and the highly unusual circumstances involving the possible authorization of the assignment of US licensed facilities to a company controlled by a foreign government, waiver of the Commission's rules is appropriate in this case to allow the submission of the Supplement and is in the public interest.
16. Indeed, a grant of the LRT Motion for a rule waiver to allow submission of the Supplement will assure that the Commission has full access to the evidence included in the filing related to the operations of Deutsche Telekom , a company in which the German government presently owns 46% of the issued and outstanding stock.
17. The requested rule waiver to allow the submission of the LRT pleading is in the public interest, as it will permit the Commission to review critical evidence.

18. If LRT is not permitted to submit the Supplement, it will not be able to present full details of the new information, which it has discovered.
19. It would not be in the public interest if the Commission did not have access to all available information as it undertakes its deliberations in the instant proceeding. (See *Citizens/US West Waiver*, *ibid*, “The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.”)
20. Given these particular circumstances, the Commission can and should properly take into account considerations of equity and more effective implementation of overall policy in this individual case to grant a waiver of rules to assure that it has the opportunity to review all available and relevant information is fully reviewed.
21. Consequently, LRT respectfully requests the Commission to waive its rules to permit the submission of the Supplement, based on a finding that (i) such waiver is appropriate, given the special circumstances as outlined by LRT herein, which warrant a deviation from the general rule, and (ii) such a waiver will serve the public interest, as it will allow the Commission the opportunity to undertake a strict review and assess grounds for approval of the subject applications.

Respectfully submitted,

/s/ William L. Whitely

William L. Whitely  
Trustee  
Litigation Recovery Trust  
515 Madison Avenue Suite 2400  
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August 21 , 2000

**CERTIFICATE OF SERVICE**

I, William L. Whitely, hereby certify that I have this 22<sup>nd</sup> of August, 2001 directed that the foregoing MOTION FOR WAIVER TO ACCEPT PLEADING be forwarded via Fax , Federal Express or US Mail, postage prepaid, to the following:

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William L. Whitely