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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of the Secretary

IN THE MATTER OF	)	
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PETITION FOR RULEMAKING TO MODIFY THE REGULATORY TREATMENT OF COMSAT WORLD SYSTEMS' MULTI-YEAR FIXED-PRICE CARRIER-TO-CARRIER CONTRACT-BASED SWITCHED-VOICE SERVICES	)	**RM 7913**

TO: THE COMMISSION

COMMENTS OF CAPITAL CITIES/ABC, CBS, NBC, AND TBS

Capital Cities/ABC, Inc. ("Capital Cities/ABC"), CBS Inc. "CBS"), National Broadcasting Company, Inc. ("NBC"), and Turner Broadcasting System, Inc. ("TBS") (collectively "the Networks"), by their attorneys and pursuant to Section 1.405 of the Commission's rules, hereby file these comments on the above-captioned petition for rulemaking ("Petition") filed by Communications Satellite Corporation, the U.S. Signatory to INTELSAT, through its World Systems Division ("COMSAT").[1/]

The Networks do not necessarily oppose in principle COMSAT's proposal for "incentive" regulation similar to price caps to be applied to certain of its switched voice services. They, however, urge the Commission to consider the ramifications of COMSAT's proposal carefully, especially with regard to services

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1/ See Public Notice Report No. 1880, March 5, 1992.

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such as television which are subject to much less competition than are COMSAT's switched voice services. If the Commission adopts COMSAT's proposal, the Networks recommend that the Commission establish and enforce cost allocation safeguards sufficiently stringent to prevent COMSAT from shifting costs from the claimed competitive services subject to incentive regulation to services such as television which under COMSAT's proposal would be subject neither to price cap safeguards nor to effective competition.

I. BACKGROUND

Until recent years, the Commission regulated the rates of all dominant carriers, including AT&T, local exchange carriers ("LECs") and COMSAT, under what has been termed at various times as "cost-of-service," "traditional," "ratebase," and/or "cost plus" regulation. Under "cost plus" ratebase regulation, the Commission allows the carrier to set rates at levels designed to recover its costs plus a reasonable return on its investment.

The Commission replaced "cost plus" ratebase regulation with "price cap" regulation for AT&T in 1989 and for the largest LECs in 1990.[2/] Price cap regulation limits a carrier's prices directly by means of caps rather than indirectly by enforcement

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[2/] Policy and Rules Concerning Rates for Dominant Carriers, Report and Order And Second Further Notice of Proposed Rulemaking ("Price Cap Report and Order"), 4 FCC Rcd 2873 (1989), Second Report and Order, 5 FCC Rcd 6786 (1990), modified on recon., 6 FCC Rcd 2637 (1991), petitions for further recon. pending, appeal docketed, D.C. Public Service Commission v. FCC, No. 91-1279 (D.C. Cir. June 14, 1991).

of a maximum rate of return. The Commission's goals in implementing price cap regulation for AT&T and the LECs were to eliminate any incentive for carriers to inflate their ratebase, to adopt a regulatory scheme that is simple to administer, and to encourage greater carrier efficiency and innovation that may lead to lower prices for the carrier's tariffed services.

COMSAT proposes that the Commission apply incentive regulation similar to price cap regulation to certain of its INTELSAT services.[3] COMSAT claims that the Commission last examined its regulatory treatment of COMSAT in 1985 when it continued to subject COMSAT to full Title II regulation based on two aspects of then-current market conditions: the fact that fiber optic cables capable of providing wide bandwidth services had not yet been deployed and the fact that the Commission's then-effective circuit loading policy assured COMSAT a substantial share of the market for international transmission capacity.[4]

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[3] Petition at ii. ("Under the proposed plan, COMSAT's rates . . . would be 'capped' at the . . . levels that went into effect on January 1, 1992").

[4] Petition at 3, citing International Competitive Carrier Policies, 102 F.C.C. 2d 812 (1985), recon. denied, 60 Rad. Reg. 2d (P&F) 1435 (1986). In fact, however, in 1989 the Commission rejected a proposal to apply price cap regulation to COMSAT's services. The Commission found that as U.S. Signatory to INTELSAT, COMSAT is obligated to share in the costs of INTELSAT and, thus, that price cap regulation cannot be applied mechanically to COMSAT, whose corporate mission is given shape by federal legislation and treaty. Price Cap Report and Order, 4 FCC Rcd 2932-33 n.197.

COMSAT claims that in the past seven years these two conditions have changed. COMSAT states that fiber optic cables are now deployed on all major traffic routes and that the Commission in 1988 terminated its international circuit distribution guidelines, so that regulatory barriers no longer impede COMSAT's major customers in any way from using their own cable facilities.[5] Additionally, COMSAT claims that it faces substantial competition from separate international satellite systems.[6] COMSAT concludes that its operations are subject to "pervasive competition" and that this justifies substantial deregulation of its activities.

COMSAT recognizes, however, that implementation of incentive regulation for all of its services likely would engender a lengthy, controversial proceeding. COMSAT proposes, therefore, to extend incentive regulation initially only to its multi-year fixed-price carrier-to-carrier contract-based switched-voice INTELSAT services ("multi-year switched voice services").[7] COMSAT proposes that its rates for multi-year switched voice services would be capped at levels that it negotiated with its major carrier customers effective January 1, 1992. COMSAT proposes that ratebase regulation of its other INTELSAT services, including television services, would remain unchanged.[8]

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[5] Id. at 7-11.

[6] Id. at 12-14.

[7] Id. at 3-4.

[8] Id. at 5 n.11.

II. IF THE COMMISSION WERE TO ADOPT INCENTIVE REGULATION FOR COMSAT'S MULTI-YEAR CARRIER SWITCHED-VOICE SERVICES, IT SHOULD ESTABLISH RIGOROUS SAFEGUARDS TO PREVENT COMSAT FROM SHIFTING COSTS TO LESS COMPETITIVE SERVICES SUCH AS THE TELEVISION SERVICE WHICH WOULD NOT BE SUBJECT TO PRICE CAP SAFEGUARDS

The Networks do not necessarily oppose in principle the adoption of price cap regulation for COMSAT's multi-year switched-voice services. If the Commission were to adopt COMSAT's proposal, however, it also must adopt and implement stringent cost allocation safeguards, buttressed by rigorous enforcement procedures, to prevent COMSAT from engaging in improper cross-subsidization by shifting costs from services subject to price cap regulation to services like television which are subject to "cost plus" regulation.[9/]

COMSAT forthrightly acknowledges the incentive it would have to shift costs from services subject to price caps to other services whose rates remain subject to "cost plus" regulation.[10/] COMSAT says, however, that such cost shifting could not occur because "the remaining categories of service offered by COMSAT (such as IBS and TV) are fully competitive."[11/]

In fact, however, COMSAT's international television services are far from "fully competitive," and, therefore, COMSAT would

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[9/] COMSAT generally provides television service over the same satellites it provides multi-year switched voice services, resulting in a large proportion of commonly shared costs which must be allocated appropriately among the various services.

[10/] Petition at 19.

[11/] Id.

have the incentive to shift costs to the television service.[12/] The two major changes upon which COMSAT relies as justification for the proposed regulatory relief for its multi-year switched services do not affect the competitiveness of the international television transmission marketplace. First, the Commission's circuit loading guidelines never applied to television services; thus, their elimination does not affect the competitive balance of the international television marketplace. Second, the widespread deployment of transoceanic fiber optic cables does not offer a meaningful competitive alternative to users of INTELSAT's international television services. For broadcasters and cablecasters, international satellites possess an overwhelming operational advantage over point-to-point underseas cables due to

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[12/] Because of this incentive to shift costs from services subject to price cap regulation to services which are not subject to effective competition, theoretically it is more logical to apply price cap regulation to the television service (which is not yet subject to effective competition) rather than to services like COMSAT's multi-year switched voice services which already are subject to a form of marketplace price caps by virtue of the long-term contracts that have been negotiated with COMSAT's major carrier-customers. Before applying price cap regulation to television services, however, at a minimum the Commission would be required to determine an appropriate initial price cap level for individual television services because, in contrast to COMSAT's multi-year switched services, COMSAT's existing television service rates have not been established through negotiations between COMSAT and its major customers. Indeed, the Networks have concerns that at present some of COMSAT's television services are priced above cost. Additionally, the Commission would be required to establish a substantial annual productivity factor which would appropriately reflect the significantly declining per unit costs which have characterized the international satellite industry for over two decades.

the satellites' greater flexibility in multi-point newsgathering and/or program distribution.[13]

Moreover, COMSAT's international television services at present are subject to only limited competition from U.S. separate international satellite systems. Only one such system (PanAmSat) currently is providing television service, and the geographical coverage of its one operational satellite cannot match the global coverage of the INTELSAT consortium. In sum, if COMSAT were to increase its television service rates, television service users currently lack realistic competitive alternatives.

COMSAT also claims that "users will be safeguarded from cost shifting by the accounting system and cost allocation procedures which the Commission has crafted for COMSAT."[14] COMSAT, however, does not identify the accounting system and cost allocation procedures to which it refers. If COMSAT is referring to the accounting and cost allocation procedures established in the COMSAT Structure Orders, those procedures were established to allocate shared capital costs and expenses between COMSAT's jurisdictional (INTELSAT/INMARSAT) activities and nonjurisdictional activities.[15] As far as the Networks are

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[13] Additionally, unlike COMSAT's major carrier customers, COMSAT's television service customers do not have an ownership interest in fiber optic cables and, therefore, do not have any economic incentive to shift service from satellites to cable, even if it were operationally feasible to do so.

[14] Petition at 19.

[15] Changes In The Corporate Structure And Operations Of The Communications Satellite Corporation, 90 F.C.C. 2d 1159 (1982), (continued...)

aware, the Commission has not established more detailed procedures for the purpose of allocating costs among COMSAT's INTELSAT space segment services. Rather, the Commission has addressed the allocation of costs among services on an ad hoc basis in the context of a particular rate or tariff investigation.[16]

In the Networks' view, the procedures established in the COMSAT Structure Orders for allocating costs between COMSAT's jurisdictional and nonjurisdictional activities are not as sufficiently comprehensive and detailed as they need to be in order to allocate costs appropriately among COMSAT's INTELSAT space segment services in those cases where a clear incentive to shift costs exists.[17] For example, those procedures do not

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[15] (...continued)
recon. denied, 93 F.C.C. 2d 701 (1983), Second Memorandum Opinion And Order, 97 F.C.C. 2d 145, recon. granted in part, 99 F.C.C. 2d 1040 (1984).

[16] See, e.g., Communications Satellite Corporation, 2 FCC Rcd 3706 (1987), modified on recon., 3 FCC Rcd 2643 (1988), remaining issues resolved, 3 FCC Rcd 7164 (1988).

[17] The accounting and cost allocation procedures established in the COMSAT Structure Orders are not nearly as detailed as those the Commission required the former Bell Operating Companies to establish and document in their cost allocation manuals filed in compliance with the joint cost allocation procedures of CC Docket No. 86-111. Separation Of Costs Of Regulated Telephone Service From Costs Of Nonregulated Activities And Amendment Of Part 31, The Uniform System Of Accounts For Class A And Class B Telephone Companies To Provide For Nonregulated Activities And To Provide For Transactions Between Telephone Companies And Their Affiliates, 2 FCC Rcd 1298, recon., 2 FCC Rcd 6283 (1987), further recon., 3 FCC Rcd 6701 (1988), aff'd sub nom. Southwestern Bell Corporation v. FCC, 896 F.2d 1378 (D.C. Cir. 1990). Indeed, COMSAT is not subject to the terms of the joint cost proceeding, Communications Satellite Corporation, 3 FCC Rcd
(continued...)

address COMSAT's use of "equivalency ratios" in purporting to establish either the INTELSAT-related component or the in-house component of COMSAT's costs. Indeed, the cost allocation procedures of the COMSAT Structure Orders do not address in any way the cost allocations which INTELSAT makes among its various services and upon which COMSAT bases its own space segment cost allocations.

For these reasons, if the Commission were to adopt COMSAT's proposal, it must take steps to ensure that COMSAT does not cross-subsidize its multi-year switched voice services which are subject to effective competition by shifting costs to services such as international television which are not subject to effective competition.

17/ (...continued)
at 7166, nor even to the private line rate structure guidelines of 47 C.F.R. § 61.40, Communications Satellite Corporation, 2 FCC Rcd 2410 at 2422 (1987).

III. CONCLUSION

For the foregoing reasons, Capital Cities/ABC, CBS, NBC, and TBS urge the Commission to take such actions as are consistent with the views expressed herein.

Respectfully submitted,

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April 6, 1992

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CERTIFICATE OF SERVICE

I, M. Inez Jubien, do hereby certify that true and correct copies of the foregoing document, "Comments of Capital Cities/ABC, CBS, NBC and TBS," filed in the matter of Communications Satellite Corporation Petition For Rulemaking To Modify The Regulatory Treatment Of COMSAT World Systems' Multi-Year Fixed-Price Carrier-to-Carrier Contract-Based Switched-Voice Services, RM 7913, were served by First Class United States Mail, postage prepaid, or hand delivered, this 6th day of April 1992, on the following:

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