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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP - 9 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Petition Filed By COMSAT Corporation For) RM-7913
Partial Relief From the Current)
Regulatory Treatment of COMSAT World)
Systems' Services)

To: The Commission

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REPLY TO OPPOSITION AND COMMENTS

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September 9, 1994

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REPLY TO OPPOSITION AND COMMENTS

COMSAT Corporation, through its COMSAT World Systems line of business ("COMSAT"), hereby responds to the few comments and lone opposition filed in response to COMSAT's Petition for Partial Relief ("Petition"). Of the hundreds of users of COMSAT's international space segment satellite services, only a few video customers (and predictably, some competitors) expressed any concern with granting COMSAT's Petition.¹ Moreover, with regard to video service tariffs, even the concerns expressed are not shared -- two of COMSAT's largest video customers support the position that COMSAT faces effective competition in this market segment, and that partial relaxation of the tariff filing requirements now applied to COMSAT is justified.² Most important, as detailed below,

¹ Capital Cities/ABC, CBS, NBC, and TBS ("Broadcasters") filed joint comments opposing COMSAT's Petition. Competitors who submitted an opposition or negative comments on the Petition were Orion Network Systems, Inc. ("Orion"); IDB Communications Group, Inc. ("IDB"); and PanAmSat, L.P. ("PanAmSat").

² Reuters Television, Ltd. ("Reuters") and Keystone Communications ("Keystone") filed comments supporting the streamlined tariff procedures proposed by COMSAT. Significantly, Reuters is COMSAT's largest user of trans-oceanic video transmission services.

none of the opponents has raised any public interest reason why COMSAT's requested relief should not be expeditiously granted.

I. None of the Parties Was Able to Refute COMSAT's Detailed Economic Analysis Which Demonstrates That All Service and Geographic Market Segments for Transoceanic Transmission Facilities are Competitive

It should come as no surprise that several of COMSAT's competitors would oppose the Petition. What is truly revealing, however, is how the opponents' substantive arguments contradict one another. Recognition of this inconsistency makes clear the weakness of the their various positions.

PanAmSat, the operator of the largest separate satellite system, argues that a grant of COMSAT's Petition would be appropriate only when COMSAT's provision of switched and non-switched services is structurally separated. PanAmSat at 2, 8-9.³ Structural separation is a prerequisite, it argues, because COMSAT faces competition only in the video and private line areas, or in what it terms the "non-switched" area. Accordingly, PanAmSat expresses concern that, absent some restraint, "COMSAT . . . can use its monopoly profits and power in the switched services area to cross subsidize and compete unfairly in the market for video

³ As the Commission is aware, COMSAT's jurisdictional Intelsat business is already structurally separated from any non-Intelsat business pursuant to the COMSAT Structure Orders. Changes in the Corporate Structure and Operation of the Communications Satellite Corporation, 90 FCC 2d 1159 (1982), recon., 93 FCC 2d 701 (1983); 97 FCC 2d 145 (1984), recon., 99 FCC 2d 1040 (1984). PanAmSat's proposal would require some regulated services to be structurally separated from other regulated services. As COMSAT demonstrated more than two years ago, PanAmSat's proposal is meritless. Opposition of Communications Satellite Corporation to Petition of Pan American Satellite to Reopen CC Docket No. 80-634 (filed July 6, 1992).

and private line services, where it competes with separate [satellite] systems." PanAmSat at 8.⁴

While PanAmSat fears that COMSAT could leverage its alleged market power in the switched services area to the detriment of competition in the private line and video area, the Broadcasters make the opposite claim. They assert that COMSAT's only competition is in the switched services area, thus leaving users of COMSAT's non-switched services, such as themselves, vulnerable. Broadcasters at 2.

The Broadcasters attempt to refute the Study's findings regarding the video market by arguing that fiber-optic cable is not a competitive alternative. This assertion completely misses the point: the Study determined that the video market segment was fully competitive without evaluating the potential impact of submarine cable transmission. See Study at 75-76. In fact, because "only the competition from PanAmSat and Orion could be quantified," id. at 75, the Study properly relied only on available data concerning separate satellite systems in finding that effective competition now exists in the provision of video and audio transmission

⁴ In a rather transparent attempt to delay immediate consideration of the Houthakker/Brattle Group Study ("Study") submitted with the Petition, PanAmSat urges that the Study be sent to an inter-agency task force for review in order to preserve government time and resources. PanAmSat at 3-4. How such a referral would accomplish those objectives defies logic. The FCC has not delegated any of its powers or authority to that group. Thus, after reviewing the Study, the inter-agency task force could only send its recommendations to the Commission which would then need to place them on public notice; only after all that has taken place could the FCC take any action. While such a delay might well serve the private interests of PanAmSat, it certainly would not serve the public interest in promoting and supporting competitive telecommunications markets.

capacity.⁵ In this regard, both Reuters and Keystone, who also are COMSAT video service customers, provide anecdotal evidence supporting the Study's conclusion. Those parties note that they use a number of separate satellite systems for their occasional television service needs in addition to INTELSAT. Reuters at 1-2; Keystone at 1. PanAmSat also confirms that it is providing effective competition to COMSAT in the non-switched arena.⁶ Indeed, since the Petition was filed, PanAmSat has launched and put into service PAS-2, on August 23, 1994, for the Asia-Pacific region. See Telecommunications Reports, August 29, 1994, at 43. PanAmSat's 1993 SEC Registration Statement states that its satellites soon will cover 98% of the world's population. Moreover, the fact that PanAmSat, Columbia, and others are providing service now, and that a number of new satellites and firms are preparing to enter the market, speaks volumes as to the true degree of competition. See Study at 75-78.⁷

Furthermore, while the Broadcasters contend that they cannot use fiber-optic cables to meet their needs, they do not deny that fiber-optic cables can be used for video transmission. Instead, they note that their preliminary efforts to explore the use of undersea cable indicate that cable operators have demonstrated little interest in serving them at prices that are

⁵ The Study did not quantify the effect of either undersea cable systems or regional separate systems as part of the procedure used to evaluate competitiveness in the video market segment. The authors did note, however, that these transmission modes can be expected to play increasing roles in this area in the future. Study at 75.

⁶ In a 1993 registration statement filed with the Securities and Exchange Commission, PanAmSat noted that its PAS-1 satellite "is the leading satellite for television distribution in Latin America", and that the company provides services in or into more than 70 countries and has approximately 250 customers. See PanAmSat SEC Form S-1 at 3 (filed May 25, 1993) ("1993 SEC Registration Statement") (emphasis added).

⁷ In its comments, for example, Orion notes that its new trans-Atlantic satellite is scheduled to be launched next month, Orion at 1, and PAS-3 is scheduled for launch in November, 1994.

competitive with COMSAT's rates. Broadcasters at 9. While COMSAT can neither confirm nor deny the Broadcasters' experience, that experience does not support the argument that fiber-optic cable is not available to meet video transmission needs (in fact, back-haul video fiber transmission is common domestically), or that COMSAT does not face extensive competition in the video area from separate satellite systems. At best, the Broadcasters' assertion shows only that certain unidentified fiber-optic carriers may not wish to pursue this business. Surely, however, the regulatory scheme applicable to COMSAT cannot depend on other entities' business plans.

While the Broadcasters believe COMSAT faces no effective competition in video services, and PanAmSat sees COMSAT facing no effective competition in switched services, IDB and Orion round out the picture by alleging that COMSAT faces no significant competition anywhere. IDB at 2; Orion at 4.⁸ In fact, Orion sees so little competition that it urges a tightening of regulation for COMSAT. Orion at 2.⁹

Although the opponents of COMSAT's Petition understandably perceive the world quite differently among themselves, they are alike in one respect: each fails to deal substantively with the Study. That document presents a detailed economic analysis of all the

⁸ IDB's position regarding switched services competition is premised on the current limitation that separate satellite systems can interconnect to the PSTN no more than 1,250 64 kbps-equivalent circuits per satellite. IDB at 7. With DCME equipment, this limit amounts to practically no restraint. See Study at 54. In any event, in October of this year, that figure is expected to rise to 8,000 circuits per satellite, which will virtually nullify any "prohibition" on switched services by separate systems. See Petition at 15, n. 42.

⁹ Orion argues that COMSAT is in a preferred position because trans-oceanic fiber cables provide only shore-to-shore communications and then must be connected to a wireline or domestic satellite network to reach a final destination. Orion at 3-4. As the Study points out, however, agreements made at this so-called "retail" level do not involve a facility's "wholesale" owner, such as COMSAT. Study at 32.

geographic and product market segments for U.S. transoceanic telecommunications facilities, and is supported with volumes of data from the Commission's own files and other referenced public sources. It is over 100 pages in length and has eleven exhibits (totalling over fifty pages) describing all the material used to support the assumptions and conclusions. Despite this, the opponents did not take the opportunity to address the Study except in the most cursory fashion; none even attempts to detail how the Study might be flawed. The opponents simply appear to dislike the Study's conclusions.

The Study demonstrates that COMSAT faces effective competition in all areas under the Commission's own criteria for evaluating competitiveness. For instance, the Study points to clear and reliable statistical data that COMSAT's cable competitors have sufficient idle capacity to absorb all of COMSAT's traffic to regions easily accessible by cable, and that existing and planned separate satellite systems will be able to do the same in regions not easily accessible by cable. Study at 94.¹⁰

Further, the Study notes that COMSAT's market share of utilized trans-oceanic telecommunication capacity for switched voice and private line services to geographic market segments that are easily accessible by existing and planned cable systems has dropped from

¹⁰ One alleged deficiency in the Study is that it projects capacity to the year 1996. In the international facilities area, this is quite conservative. Facilities less than two years away from activation are currently under construction and almost always will be placed into service. For example, when the Study was filed with the FCC on July 1, 1994, neither PAS-2 nor the Americas-1 fiber optic cable was in service, but both now are operating. See Attachment. In addition (and again since the Petition was filed), AT&T has sought Section 214 authority to connect foreign fiber-optic cables to the United States for service to, among other locations, Odessa, Ukraine, and Novorossijk, Russia. See "AT&T Seeks Facilities Authority for Black Sea Fiber Optic Cable," Telecommunications Reports International, September 2, 1994 at 14. In its Section 214 application, AT&T observed that the extension of this fiber technology "will sharpen intermodal and intramodal competition by supplementing existing cable capacity and by interconnecting with other optical fiber submarine cable systems." Id.

the 60 to 85% range in 1988 to between 25 and 50% in 1993. Id. at 65. Although the opponents make much of the fact that COMSAT enjoys higher market shares in geographic market segments that are not easily accessible by cable, they fail to mention the fact that these higher shares are mitigated by current and planned separate satellite systems and expanding regional cable networks. These geographical market segments account for less than 20% of COMSAT's utilized capacity and only 6% of the total market for switched voice and private line services. Id.

Moreover, the Study does not rest on economic theory alone, as some opponents suggest. The market data contained in the Study shows that not only do COMSAT's customers have opportunities to utilize non-COMSAT facilities, they are doing so. Indeed, COMSAT's declining market share of utilized trans-oceanic telecommunications capacity for all services demonstrates beyond doubt the presence of effective competition. With respect to video and audio services, the Study found that between 1987 and 1996 COMSAT's trans-oceanic market share will decline from 100% to as low as 40% of utilized capacity. Id. at 77.¹¹ With respect to IMTS/private line traffic, COMSAT's average market share had declined by 1993 to only about 33% of the traffic between the United States and transoceanic foreign points. Id. at 47.

¹¹ In attempting to argue that competition is minimal, PanAmSat points out that no separate satellite system has an Indian Ocean satellite. What PanAmSat conveniently fails to mention, however, is that traffic to and from the United States cannot "see" satellites positioned over the Indian Ocean. Accordingly, any meaningful study of U.S. international facilities would not consider Indian Ocean facilities, and the Houthakker/Brattle Group Study appropriately disregards those facilities.

II. Assertions that Significant Harm Would Result from the Minimal Tariff Filing Changes Sought by COMSAT Are Not Credible

In addition to not refuting the Study's economic analysis, no opponent explained how granting COMSAT's requested relief could possibly lead to the harms feared. To the contrary, the video customers supporting COMSAT's Petition confirm the benefits of flexibility and quicker initiation of services. The reality is that COMSAT has asked for a minimal relaxation of its tariff filing obligations -- far less than what could be justified. The public simply is not denied the opportunity to evaluate COMSAT tariffs because they will be filed on fourteen days' notice with minimal cost data. The vast majority of domestic and international tariffs are filed on even less notice and with no cost data.¹²

It also should be noted that COMSAT's competitors and customers, such as the Broadcasters, are in the telecommunications retail business themselves, employ both in-house and outside consultants to evaluate tariff filings, and can hardly claim to be at a disadvantage in reviewing tariffs. Consequently, a fourteen-day notice period gives the Broadcasters ample time to determine their position on any tariff filing, and their ability to file a Section 208 complaint is always available. The Broadcasters' argument that they will be harmed in some fashion by grant of COMSAT's relief simply strains credulity.

¹² Several parties have requested COMSAT to be more precise in explaining what reduced tariff cost support data it proposes to file if its requested relief is granted. Because COMSAT has not requested a change in its dominant carrier status at this time, it is not proposing the complete elimination of cost support for all its tariff filings. Rather, for any "new" Intelsat offering (as defined in Section 61.3(s) of the Commission's Rules, 47 C.F.R. § 61.3(s)), COMSAT would provide the cost support data specified in Section 61.38(b)(2)(i), of the Commission's Rules, 47 C.F.R. § 61.38(b)(2)(i). For all other tariff filings (e.g., adding another lease term to an existing service; specifying an additional service point), COMSAT would submit a statement explaining the reasons for the filing and how it will serve the public interest. See Reuters at n.1; Keystone at 3.

CONCLUSION

The Commission has been presented a Petition and substantive economic Study that conclude that COMSAT faces effective competition and deserves partial regulatory relief. Not one of the opponents to COMSAT's Petition has proffered any serious market analysis that calls into question the detailed industry review prepared by Professor Houthakker and The Brattle Group. Furthermore, with regard to its video and audio services, two of COMSAT's largest video users endorse more streamlined tariffing. The record in this proceeding therefore fully supports the relief that COMSAT has requested. Beyond this, it is not without decisional significance that the opponents contradict one another and fail to describe how the modest relief sought will cause any discernible harm.

Accordingly, COMSAT respectfully requests expedited grant of its Petition for Partial Relief.

Respectfully submitted,

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September 9, 1994

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ATTACHMENT

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September 1, 1994, Thursday

SECTION: Financial News

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HEADLINE: MCI BEGINS SERVICE ON AMERICAS-1 CABLE

BODY:

MCI today began providing commercial service on the AMERICAS-1 Fiber Optic Digital Cable System. The AMERICAS-1 Cable is owned by a consortium of 64 carriers from 42 countries and links Florida with St. Thomas, Brazil, Trinidad and Venezuela.

MCI is the fourth largest investor in the cable. MCI de Venezuela, an MCI International wholly-owned subsidiary, currently providing international satellite service, is the second largest Venezuelan investor in the cable.

RYE BROOK, N.Y., Sept. 1

The soon-to-be-announced UNISUR Cable will extend service from Brazil to Argentina and Uruguay, and the COLUMBUS II Cable System, scheduled for December, 1994, will interconnect with the AMERICAS-1 Cable at St. Thomas to extend fiber optic digital service to Mexico and Central America in the west and Southern Europe in the east. A tentative cable system called Pan-American Cable System will be discussed in the next few months by area telecommunications entities. The system would connect the U.S. with the West Coasts of Central and South America.

"The new AMERICAS-1 submarine fiber optic configuration will play an exciting role in linking North and South America to further the U.S. economic ties with the rest of the Americas Region," said Seth Blumenfeld, Group Executive of External Affairs for MCI. "For years, CI has been the leading provider of private lines with Central and South America. MCI and our customers need the quality and bandwidth that today's modern fiber optic cables provide. More than just the announcement of yet another submarine cable, this heralds the beginning of significant fiber connectivity of the Americas."

The AMERICAS-1 Cable consists of a two fiber pair, 2.4 Gbps cable between Vero Beach, Florida, and St Thomas, U.S. Virgin Islands, offering more than 120,000 derived voice circuits. South of St. Thomas the system will be a three fiber pair, 560 Mbps cable providing up to 90,000 derived voice circuits to Brazil, Trinidad and Venezuela.

Between Florida and St. Thomas, the AMERICAS-1 system will operate in parallel with a similar 2.4 Gbps system between West Palm Beach and St. Thomas, which is part of the COLUMBUS II Cable, so that the two systems will provide instantaneous restoration and back-up to each other in the event of a failure in either cable system. A fiber line will be installed overland between the two

PR Newswire, September 1, 1994

Florida cable stations at Vero Beach and West Palm Beach to facilitate this mutual restoration process.

MCI, headquartered in Washington, D.C., offers a full range of domestic and global telecommunications services through one of the world's largest state-of-the-art networks. With annual revenue of nearly \$12 billion, the company has more than 65 offices in 60 countries and places. CONTACT: Alan Garratt of MCI International, +1-914-934-6484

LANGUAGE: ENGLISH

LOAD-DATE-MDC: September 2, 1994

CERTIFICATE OF SERVICE

I, Rosemary C. Harold, certify that copies of the foregoing "REPLY TO OPPOSITION AND COMMENTS" were served by first-class mail, postage prepaid, this 9th day of September, 1994 on the following:

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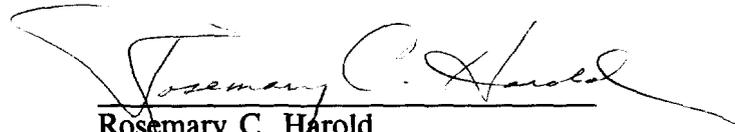
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