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

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In the Matter of	)	
Comsat Corporation	)	RM-7913
	)	
Petition For Partial Relief From Current Regulatory Treatment of Comsat World Systems' Switched Voice, Private Line, and Video and Audio Services	)	

PETITION FOR RECONSIDERATION OF PANAMSAT

PanAmSat Corporation ("PanAmSat"),[1] by its attorneys, hereby submits this petition for reconsideration of the Commission's decision to grant a waiver of its tariff requirements (the "Partial Relief Order") to Comsat Corporation ("Comsat") in response to the above-captioned petition (the "Petition").

INTRODUCTION AND SUMMARY

In its Petition, Comsat sought permission to follow the "streamlined" procedures that apply to tariff filings by non-dominant carriers. In support of its request, Comsat relied principally on what it perceived to be its competitive disadvantage vis-a-vis other video service providers, and on an assertion that its statutory monopoly does not convey market power.

In the Partial Relief Order, the Commission denied Comsat's waiver request as it applied to video (and associated audio) services, finding that Intelsat has "a strong competitive advantage" in this area.[2] The Commission also explicitly left in place its prior finding that "Comsat is dominant in the provision of Intelsat space segment and television services in the United States."[3]

Notwithstanding these findings, the Commission eliminated the tariff protections that it has used historically to guard against dominant carriers abusing their market power. With respect to all of Comsat's space segment services, with the exception of video services, tariffs may now be filed on 14 days' notice and will be presumed to be lawful for purposes of advance tariff review. In addition, Comsat will no longer need to

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[1] PanAmSat Corporation is the successor in interest to PanAmSat, L.P., which opposed Comsat's above-referenced petition for partial relief.

[2] Partial Relief Order ¶ 33.

[3] Id. ¶ 1.

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provide full cost support for these tariffs, so long as it provides supporting material demonstrating that the filing (1) does not restrict the availability of any service in "thin-route"[4] countries, and (2) has the same rate impact on thin route users as on high volume users.

The Commission's decision to grant Comsat a partial waiver of its tariff filing rules is unwarranted. First, as PanAmSat has noted a numerous occasions, the Commission should avoid decisions that change substantially the regulatory protections provided to Comsat's customers and competitors at a time when the executive and legislative branches of the U.S. government are examining the future competitive structure of Intelsat, Inmarsat, and Comsat. Indeed, a primary concern in the privatization process has been the ability of existing regulatory mechanisms to protect against abuse of monopoly power by Comsat during the transition to a fully-competitive market. By granting Comsat a waiver of the tariff filing requirements, the Commission has undermined the process and added unnecessary complexity to other transition issues.

Second, the Commission's analysis of the market for public switched services and the competition Comsat faces from undersea cable systems is flawed. In fact, undersea cables do not compete directly with Comsat's services. As PanAmSat explained in its opposition to Comsat's Petition, Comsat is guaranteed a significant share of the public switched market by virtue of Comsat's long-term arrangements with international carriers; by the inability of cables to compete effectively for thin-route and remote area traffic; by the need for PTTs worldwide to recover their sunk investment in the Intelsat system; and by the general preference of carriers for deploying a mix of cable and satellite facilities.

Thus, and for the reasons set forth below, the Commission should reconsider the Partial Relief Order, and reverse its decision granting Comsat a limited waiver of the tariff requirements in Sections 61.38 and 61.58 of the Commission's rules.

I. The Partial Relief Order Will Undermine The U.S. Government's Efforts To Foster A Fully-Competitive Satellite Services Market.

The U.S. Department of Commerce, the Department of State, and a number of other government agencies and offices, are in the process of advocating fundamental

[4] "Thin route" countries are those that are not served, directly or indirectly, by U.S. carriers through use of cables. See Partial Relief Order ¶ 26 n.59.

changes in the structure and operations of Comsat and the intergovernmental organizations ("IGOs") of which it is a member. One of the principle concerns regarding the privatization process, which has been expressed by regulators and market participants alike, has been the need to protect against competitive abuses during the period of transition to a fully competitive market.[5]

Privatization cannot occur in a vacuum. If the regulatory safeguards applicable to Comsat are eliminated prior to the establishment of a fully competitive market, Comsat will pose a serious competitive threat to other satellite operators and the industry. Comsat still enjoys many competitive advantages in the market. For instance: (1) Comsat is immune from antitrust action to the extent that it is engaged in activities as an IGO signatory; (2) the IGOs hold the preferred spectrum and orbital slots for transoceanic communications; (3) Comsat still is the dominant provider of space segment services in the United States; and (4) private satellite operators still must tailor their business plans to those of the IGOs.[6]

Given the numerous competitive advantages of Comsat and the IGOs, and the need for continued regulatory oversight while these competitive advantages exist, there is no basis for a waiver of the Commission's tariff requirements at this time. Indeed, the waiver granted in the Partial Relief Order threatens to undercut the government's efforts to privatize Comsat and the IGOs. By allowing Comsat to file tariffs on 14 days' notice with a presumption of lawfulness, the Commission will reduce the safeguards built into the normal tariff process and limit meaningful government oversight of Comsat's still-regulated activities. This, in turn, will undermine efforts to keep Comsat in check while conditions are established for a competitive marketplace. If this results in market distortions, the entire privatization process may be impaired.

In any event, the new streamlined tariff procedures add a further level of complexity to the privatization process. Regulators considering the appropriate level of safeguards during the transition period must not only consider whether Comsat should continue to be subject to traditional tariff requirements and the timing of the elimination of the requirements, but now also must consider whether special tariff requirements

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5 See, e.g., PanAmSat Opposition to Comsat's Petition (filed Aug. 25, 1994) at 3 (quoting representative Markey and Chairman Hundt); see also FCC Report, Vol. 13 (Aug. 11, 1994) (transition to privatization a "key concern" in the market); PR Newswire (Aug. 8, 1996) (satellite coalition expressing concern over transition issues).

6 See GAO Report to the Chairman, Committee on Commerce, House of Representatives, Competitive Impact of Restructuring the International Satellite Organizations (July 1996) at 5.

applicable to Comsat should apply. For these reasons alone, the Commission should reconsider the Partial Relief Order and deny Comsat's Petition.

II. The Partial Relief Order Overstates The Level Of Competition Faced By Comsat's Space Segment Services.

The Commission's decision in the Partial Relief Order turns, in large part, on the competition to Comsat space segment services from undersea cables and from private international satellite systems.[7] The Commission, however, has overlooked the legal, technical, and financial factors that make undersea cable services an imperfect substitute for Comsat's satellite services. Moreover, as the Commission recognizes elsewhere in the Partial Relief Order, the competition that Comsat presently faces from separate systems is inadequate to check Comsat's ability to engage in anticompetitive behavior. The analysis supporting the Partial Relief Order, therefore, is flawed.

A. Comsat Does Not Face Adequate Competition From Undersea Cables.

As PanAmSat demonstrated in its opposition to Comsat's Petition, undersea fiber optic cables provide ineffective competition to satellites. Indeed, the Commission did not, in the partial Relief Order, disturb its earlier finding that space segment services are a separate "sub-market" from services provided by undersea cables.[8] Nonetheless, the analysis in the Partial Relief Order treats space segment services and undersea cables as if they are perfect substitutes. They are not.

To begin with, undersea cables are used almost exclusively on high-density routes across the Atlantic and Pacific Oceans. As the Commission's decision itself reflects, most of the rest of the world, including most of the developing world, is not served or is incompletely served by cables. Further, cost considerations dictate that satellites will have unchallenged access outside of high-density routes for the foreseeable future. Fiber optic cables require an extremely large up-front investment and are capable of providing service only over a dedicated path. Thus, it is likely that such cables will continue to serve only routes to developed countries with infrastructure capable of sustaining the levels of traffic required to justify the cost of the cable.[9]

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[7] See Partial Relief Order ¶ 21.

[8] International Competitive Carrier Policies, 102 F.C.C.2d 812, 838-39 (1985).

[9] The cost advantages of satellites will take on increasing significance in the future. Developing countries and remote regions are the growth areas for public switched traffic. As these areas attempt to enter the modern communications age, satellites offer an instant and cost-effective opportunity to establish a communications infrastructure. Comsat's statutory monopoly will prove invaluable as these markets continue to develop.

The Commission's response to this imbalance in the Partial Relief Order was to impose upon Comsat a minimal cost support showing for space segment tariff filings that would demonstrate that the filing (1) does not restrict the availability of any service in thin-route countries, and (2) has the same rate impact on thin-route users as on high volume users.[10] This response is inadequate, however, because the lack of competition to Comsat space segment services is more than a question of protecting thin-route customers. Whereas the Commission's minimal cost support requirement may provide some protection against price discrimination, it does not address predatory pricing concerns or other forms of fundamental anticompetitive activity that Comsat's preferred position permits.

Moreover, Comsat enjoys additional advantages which tend to guarantee to Comsat a share of the market. For instance, Comsat holds an advantage in the market by virtue of its common ownership with foreign signatories of the Intelsat facilities that it uses to provide service. Many of these foreign signatories are the same entities that control the foreign end of most international cables. Because these foreign entities have embedded investments in the Intelsat system and an interest in preserving the financial strength of Intelsat, the decision between international cable and satellite facilities is not made on the basis of market forces, but rather is a corporate decision regarding allocation of traffic. Recent and upcoming investments by Intelsat in a new generation of Series VIII and VIII-A satellites will add to the incentives for foreign signatories to allocate traffic to the Intelsat system.

Comsat's competition from cables also is limited by the long-term fixed-price contracts that Comsat put in place as a substitute for the FCC's "balanced loading" requirements. As Comsat has conceded, these contracts not only guarantee it a substantial quantity of AT&T's and MCI's current traffic, but also an opportunity to grow along with these carriers' "growth traffic" over time.[11] These long-term agreements eliminate price elasticity for a significant part of the market because the agreements guarantee that traffic will be carried by Comsat regardless of the price or quality of services offered by potential competitors.[12] Comsat also enjoys a sheltered

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[10] Partial Relief Order ¶ 26.

[11] See Comsat Petition (filed Jan. 30, 1992) at 10.

[12] In a separate proceeding, PanAmSat has asked the Commission to apply its "fresh look" policy to these agreements and allow customers beholden to Comsat to opt out of these contracts and renegotiate service either with Comsat or one of its competitors. See Motion to Apply the "Fresh Look" Doctrine to Comsat, File No. 108-SAT-MISC-95 (filed Apr. 25, 1995). That request remains pending.

market, without regard to quality or price, by virtue of the fact that most carriers and administrations prefer to use a mix of satellite and cable facilities for restoration purposes.

These circumstances make Comsat a formidable competitor in all regions. In high traffic locations, Comsat is assured of substantial traffic by long-term agreements, the embedded investment that foreign communications entities have in the Intelsat system, and the desire of carriers to diversify their traffic and have restoration capacity. In thin-route and developing areas, Comsat is king because laying fiber optic cable would be cost-prohibitive. By any fair standard, therefore, Comsat continues to possess market power in the marketplace. A waiver of the safeguards applicable to Comsat, therefore, is unwarranted.

B. Competition From Separate Systems Is Not Sufficient To Check Comsat's Substantial Market Power.

Although separate systems have made significant in-roads into the satellite services markets, they do not provide and adequate check on Comsat's ability to engage in anticompetitive conduct. First, separate systems are limited in their ability to compete with Comsat in this market by some of the same factors that limit competition from undersea cables. For example, Comsat's long-term contracts preclude separate systems from entering a significant portion of the market for years to come.

In addition, however, separate system operators face certain unique challenges when competing with Comsat. For instance, both as a matter of law and as a practical matter, separate international satellite systems have been prohibited from competing effectively for international public switched services.[13] As a result, Comsat long has enjoyed monopoly control of that market. Moreover, in contrast with Comsat's

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[13] Separate satellite systems originally were prohibited from providing any public switched network services. See Establishment of Satellite Systems Providing International Communications, ("Separate Satellites") 101 F.C.C.2d 1046 (1985), recon., 61 R.R.2d 649 (1986), further recon., 1 FCC Rcd 439 (1986). In 1990, separate systems were permitted to provide *de minimis* PSN services (not more than 100 circuits per satellite system). See Permissible Services of U.S.-Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization (INTELSAT), ("Permissible Services Order") 7 FCC Rcd 2313 (1992). The *de minimis* level of PSN service that separate systems could provide was later expanded to 1,250 circuits per satellite. See Permissible Services of U.S.-Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization (INTELSAT), ("Further Permissible Services Order") 9 FCC Rcd 347 (1994). In late 1994, Intelsat determined that separate systems can provide a larger amount of PSN services without causing significant economic harm to Intelsat, and the PSN restriction is expected to be eliminated entirely in January 1997.

guaranteed access to most overseas points by virtue of its Intelsat monopoly, separate systems face barriers to entry overseas. Many of the entities with which separate systems must work to obtain access to overseas markets are the same entities that are Intelsat signatories. These foreign entities, thus, have every economic reason to block or slow separate system access to customers in their country.

Finally, as the Commission recognizes elsewhere in the Partial Relief Order, separate systems "do not yet match the global reach of Intelsat in terms of connectivity and transponder capacity."[14] Comsat still has access to many times the capacity of all separate system providers combined. In combination with its other competitive advantages, it simply is unrealistic to think that full and fair competition can thrive in this market absent significant competitive safeguards such as the tariff filing requirement. A waiver of that requirement, therefore, is unwarranted.

CONCLUSION

For the reasons stated herein, the Commission should reconsider the Partial Relief Order and deny Comsat's Petition.

Respectfully submitted,

PANAMSAT CORPORATION

By: /s/ Joseph A. Godles
Joseph A. Godles
W. Kenneth Ferree

GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 429-4900

Its Attorneys

September 16, 1996

14 Partial Relief Order ¶ 33.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition of Reconsideration of PanAmSat was sent by first-class mail, postage prepaid, this 16th day of September, 1996, to each of the following:

Gail L. Polivy, Esq.
GTE Service Corporation
1850 M Street, N.W., Suite 1200
Washington, D.C. 20036
Counsel for GTE Hawaiian Telephone Company

Raul R. Rodriquez, Esq.
Leventhal, Senter & Lerman
2000 K Street, N.W., Suite 600
Washington, D.C. 20036
Counsel for Aeronautical Radio, Inc.

Leon M. Kestenbaum, Esq.
Michael B. Fingerhut, Esq.
1850 M Street, N.W., Suite 1110
Washington, D.C. 20036
Counsel for Sprint Communications Company L.P.

John M. Scorce, Esq.
Jodi L. Cooper, Esq.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Counsel for MCI Telecommunications Corp.

Francie J. Berry, Esq.
David P. Conduit, Esq.
Ivars V. Mellups, Esq.
295 North Maple Avenue, Room 3244J1
Basking Ridge, New Jersey 07920
Counsel for American Telephone & Telegraph Company

Randolph J. May, Esq.
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Counsel for Capital Cities/ABC Company, Inc.;
CBS Inc.; National Broadcasting Co., Inc.;
Turner Broadcasting System, Inc.

Warren Y. Zeger
Howard D. Polsky
Keith H. Fagan
COMSAT Corporation
COMSAT World Systems
6560 Rock Spring Drive
Bethesda, Maryland 20817

Thomas J. Keller, Esq.
Michael S. Wroblewski, Esq.
Verner, Liipfert, Bernhard, McPherson
& Hand, Chartered
901 - 15th Street, N.W., Suite 700
Washington, D.C. 20005

Richard Shay, Esq.
April McClain-Delaney, Esq.
Orion Network Systems, Inc.
2440 Research Boulevard, Suite 400
Rockville, Maryland 20850

Robert S. Koppel
Vice President, Legal Affairs
and Regulatory Counsel
Richard S. Whitt
Regulatory Counsel
15245 Shady Grove Road, Suite 460
Rockville, Maryland 20850

Delbert D. Smith
Stefan M. Lopatkiewicz
Reed Smith Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

Dawn Hottinger

/s/ Dawn Hottinger
Dawn Hottinger