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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

ORIGINAL

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

**OPPOSITION OF COMSAT CORPORATION  
TO PETITION FOR RECONSIDERATION**

COMSAT Corporation ("COMSAT") hereby opposes PanAmSat Corporation's Petition for Reconsideration<sup>1</sup> ("PanAmSat Petition") of the Commission's grant<sup>2</sup> of streamlined tariffing regulatory relief for COMSAT World Systems' switched voice and private line services. PanAmSat has offered no basis for reversing the Commission's judgment, and its Petition should be dismissed.

On August 15, 1996, the Commission took a first step towards eliminating unnecessarily burdensome regulation of COMSAT by allowing it to use "streamlined" tariff filing procedures for switched voice and private line services. COMSAT may now file tariffs on 14 days' notice for these services, and these tariffs will be presumed lawful for purposes of advance tariff review. In addition, the Commission has required that COMSAT provide supporting material to demonstrate that: (1) the tariffs do not restrict the availability of any service in "thin-route" countries, and (2) the tariffs have the same rate impact on thin-route users as on high volume users.

<sup>1</sup> Petition for Reconsideration of PanAmSat, RM-7913 (filed Sept. 16, 1996).

<sup>2</sup> Order Concerning Comsat Corporation Petition for Partial Relief, RM-7913 (rel. Aug. 15, 1996) ("Partial Relief Order").

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PanAmSat now complains that the Commission's decision was incorrect. PanAmSat argues that: (1) the Commission wrongly determined that there is competition in the public switched services market because neither undersea cables nor separate systems effectively compete with COMSAT;<sup>3</sup> and (2) the Commission should not change regulations while reviewing other aspects of COMSAT's business, including the possible restructuring of INTELSAT.<sup>4</sup>

PanAmSat's Petition presents no valid reasons for reconsidering the Commission's *Partial Relief Order*. PanAmSat offers no rebuttal to the compelling evidence submitted by COMSAT demonstrating that substantial competition exists in the switched voice and private line market.<sup>5</sup> Nor does its Petition justify an indefinite delay of regulatory relief pending other proceedings.

In fact, PanAmSat's Petition is yet another example of its preference to use the regulatory process to hamstring COMSAT, rather than to compete on the basis of price and service in the marketplace. In the *Partial Relief Order* itself, the Commission itself recognized that easing COMSAT's regulatory burden can "serve the public well by reducing the opportunities for gamesmanship by parties participating in the regulatory process."<sup>6</sup> Ironically, PanAmSat is seeking reconsideration of this very decision.

The Commission should deny PanAmSat's Petition, and take further steps to remove unnecessarily burdensome regulation of COMSAT by granting COMSAT's Streamlined Video Petition, filed October 25, 1996.

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<sup>3</sup> PanAmSat Petition at 2.

<sup>4</sup> *Id.*

<sup>5</sup> In COMSAT's original Petition for Partial Relief, COMSAT submitted an analysis by Professor Hendrik S. Houthakker of Harvard University and The Brattle Group showing that substantial competition exists for such services. *COMPETITION IN THE MARKET FOR TRANS-OCEANIC FACILITIES-BASED TELECOMMUNICATIONS SERVICES* (June 24, 1994).

<sup>6</sup> *Partial Relief Order*, ¶ 35.

## I. THE INTERNATIONAL TELECOMMUNICATIONS FACILITIES MARKET IS COMPETITIVE

PanAmSat's baseless contention that the Commission erred in finding that the market for satellite services is competitive -- and that COMSAT therefore had no market power -- should be dismissed. This issue was fully considered and rejected by the Commission in the *Partial Relief Order*. PanAmSat has offered no new evidence that would warrant a different conclusion.

The Commission's conclusion that both undersea cables and separate satellite systems effectively compete with COMSAT was based on substantial economic evidence submitted by COMSAT. The evidence showed (and even more recent evidence confirms) that an abundance of cable and satellite capacity prevents COMSAT from increasing prices above market rates, and thus that COMSAT has no market power. PanAmSat has not even attempted to rebut this evidence.

Instead, PanAmSat argues that "undersea cables are used almost exclusively on high-density routes across the Atlantic and Pacific Oceans ... [and] most of the rest of the world, including most of the developing world, is not served or is incompletely served by cables."<sup>7</sup> Thus, it concludes, cables do not effectively compete with COMSAT. PanAmSat offers no evidence in support of this conclusory assertion. This is not surprising, for the Commission's finding that undersea cables do, in fact, effectively compete with COMSAT was based on unrefuted evidence. In particular, the Commission found that 91.55 percent of international IMTS revenues came from service to foreign points served by cables in 1993, and that 31 more countries would be served by cables by 1996.<sup>8</sup> The Commission also examined "demand and supply elasticities, cost advantages, and access to resources"<sup>9</sup> in finding that undersea cables

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<sup>7</sup> PanAmSat Petition at 4.

<sup>8</sup> *Partial Relief Order*, ¶ 22. The most recent data prove that these findings were correct. See Petition to Deny/Comments of COMSAT Corporation, File # 2-SAT-AL-97(11), *et al.*, at 12-17 (filed Dec. 2, 1996).

<sup>9</sup> *Partial Relief Order*, ¶ 23.

effectively competed with COMSAT in these markets. This competition, combined with that from separate systems, ensures that COMSAT has no market power.

Again citing no evidence, PanAmSat also still contends that separate satellite systems do not compete effectively with COMSAT for telecommunications traffic.<sup>10</sup> However, PanAmSat's credibility is in doubt on this point, for it has argued the opposite in defending its proposed merger with Hughes Communications, Inc., stating in that proceeding that "[t]he international FSS market is highly competitive."<sup>11</sup> And, again, PanAmSat offers no facts in support of its contention.

PanAmSat also claims, without support, that separate systems cannot compete because "Comsat still has access to many times the capacity of all separate system providers combined."<sup>12</sup> The truth is that COMSAT and PanAmSat today have nearly equivalent international satellite resources. INTELSAT owns 24 satellites. COMSAT, as a 19.1 percent investor in INTELSAT, has access to the equivalent capacity of slightly more than four of these satellites, and is generally limited to providing only the U.S. half-circuit of the transmission. PanAmSat has four satellites in operation, plans to launch many more in the near future, and provides both the U.S. and foreign end of the transmission.<sup>13</sup>

PanAmSat further argues that separate satellite systems cannot compete with COMSAT because foreign INTELSAT signatories control their access to overseas markets, and these

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<sup>10</sup> PanAmSat Petition at 6.

<sup>11</sup> Opposition of PanAmSat Licensee Corp., File # 2-SAT-AL-97(11), *et al.*, at 6 (filed Dec. 12, 1996). In that proceeding, PanAmSat also sponsored economic testimony stating that "competition is substantial" for non-U.S. markets. Statement of Professor Jerry A. Hausman, Economics Dept., Massachusetts Institute of Technology, ¶ 10 (attached as Att. A to the PanAmSat Opposition). Hughes Communications, Inc., PanAmSat's partner in the proposed merger pending before the Commission, further admits that the IMTS market is competitive. Opposition of Hughes Communications, Inc. and Affiliated Companies, File Nos. 2-SAT-AL-97(11), *et al.*, at n.19 (filed Dec. 12, 1996).

<sup>12</sup> PanAmSat Petition at 7.

<sup>13</sup> *Space News*, August 7, 1995, at 3.

signatories will block their entry to support COMSAT.<sup>14</sup> This too was considered and rejected by the Commission and is belied by experience. PanAmSat offers no new evidence for the Commission's consideration.<sup>15</sup> Indeed, PanAmSat tells its investors that "national telecommunications authorities have not typically required [PanAmSat] to obtain licenses or regulatory authorizations in order to provide space segment capacity to licensed entities."<sup>16</sup>

PanAmSat also asserts that separate systems cannot compete effectively with COMSAT because "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."<sup>17</sup> However, the decade-old restriction that has limited the ability of separate satellite systems to interconnect with the public switched telephone network ("PSTN") expired on December 31, 1996.<sup>18</sup> There is no longer any constraint on the legal ability of PanAmSat to provide IMTS and other switched public services -- and, of course, there has never been any technological constraint preventing separate systems from competing for switched traffic. Moreover, there has

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<sup>14</sup> PanAmSat Petition at 7.

<sup>15</sup> This argument was also rejected in PanAmSat's failed antitrust suit against COMSAT, where the court found that foreign entities did not exclude PanAmSat from foreign markets. *Alpha Lyracom Space Communications, Inc., et al. v. COMSAT*, 1996 U.S. Dist. LEXIS 12915, at \*63 ("*PanAmSat v. COMSAT*").

<sup>16</sup> SEC Form 10-K at 22 (Apr. 1, 1996).

<sup>17</sup> PanAmSat Petition at 6 (footnote omitted).

<sup>18</sup> See *Permissible Services of U.S. Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization (INTELSAT)*, DA-96-1904, ¶ 2 (rel. Nov. 18, 1996) (order immediately authorizing interconnection of up to 8,000 64-kbps equivalent circuits and noting expiration of last remaining cap by year's end). As the Commission's most recent action reflects, the PSTN restriction has been relaxed in stages over a period of years beginning in 1992, when the agency first allowed separate systems to interconnect up to 1,250 64-kbps equivalent circuits to the public switched network. See *Permissible Services of U.S. Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization (INTELSAT)*, 7 FCC Rcd 2313 (1992). The switched voice market thus has been available for some time to any separate system that desired to enter it.

never been any restriction on the ability of separate systems to provide private line services, and they have done so very successfully for years.

Finally, PanAmSat's argument regarding long-term fixed contracts is irrelevant to whether COMSAT's rates should be subject to streamlined tariff regulation and, in any event, is the subject of another proceeding. PanAmSat has raised the same issue in its "fresh look" proceeding, where COMSAT has explained why it is meritless.<sup>19</sup> In particular, COMSAT showed that the Commission approved the use of long-term contracts, noting that such contracts serve the public interest as a less regulatory substitute for the former "balanced loading" policy. Furthermore, "fresh look" is utterly inappropriate where, as here, COMSAT neither possessed market power when the contracts were formed, when they were re-negotiated, nor now, as shown by the continuing decline in the percentage of international traffic subject to long term contracts, and in COMSAT's prices for switched voice circuits.

## **II. THERE IS NO REASON THAT THE COMMISSION SHOULD OVERTURN ITS GRANT OF STREAMLINED RELIEF WHILE IT CONSIDERS OTHER COMSAT AND INTELSAT ISSUES**

PanAmSat also asks the Commission to reverse its grant of streamlined relief because other COMSAT-related issues currently are being considered. It argues that the Commission will be confused if it must consider whether, and for how long, streamlined tariff requirements or full tariff filing requirements should apply to a restructured INTELSAT.<sup>20</sup>

This position has no merit and borders on being insulting to the Commission. PanAmSat identifies no reason why the Commission will find the issues surrounding whether to restructure INTELSAT more difficult because of streamlined tariffing. When and whether INTELSAT is restructured has nothing to do with whether COMSAT has market power in the United States.

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<sup>19</sup> See *Opposition of COMSAT Corporation*, File No. 108-SAT-MISC-95 (filed July 13, 1995). In that pleading, COMSAT also pointed out that PanAmSat's petition was procedurally and constitutionally infirm.

<sup>20</sup> See PanAmSat Petition at 3.

Because it does not, streamlined tariff relief is appropriate. The Petition is simply a transparent effort to hamstring a competitor, a tactic for which PanAmSat is notorious.<sup>21</sup> The Commission should not allow its processes to be abused in this manner.<sup>22</sup>

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<sup>21</sup> PanAmSat's practices have drawn condemnation from both business rivals and the federal courts. Prior to its recent merger announcement, Hughes strongly criticized PanAmSat for filing "no less than ten vexatious pleading supposing [Hughes'] applications" to enter as a rival supplier of DTH services while at the same time seeking "Commission authority to expand its coverage and the services that it provides, and to seize as many orbital locations and frequency bands as possible before its potential U.S. competitors are granted the opportunity to compete." Petition to Deny or to Hold in Abeyance of Hughes Communications Galaxy, Inc., Applications of PanAmSat Licensee Corp. for Authority to Construct, Launch, Operate Separate International Communications Satellites, at i (filed May 12, 1995); *see also* "Free COMSAT and Fix International Rates," BUSINESS COMMUNICATIONS REVIEW, Sept. 1994 (noting that COMSAT's cost studies are "routinely challenged" — and that although such challenges are "almost never successful," they do interpose delay that prompts prospective customers to turn to rival service providers).

With respect to the courts, PanAmSat's tactics in pressing its baseless antitrust suit against COMSAT so outraged U.S. District Judge John F. Keenan that he denounced PanAmSat's apparent "effort to conceal the perceptible lack of support for [its] claims in the record. . . . These practices so completely fail present the material issues for review that they cause the Court to question whether they are not a calculated attempt to survive the motion *not on the merits but by overwhelming judicial resources with a mountain of paper.*" *PanAmSat v. COMSAT*, 1996 U.S. Dist. LEXIS 12915, at \*66-67, n.8 (emphasis added).

<sup>22</sup> PanAmSat has, of course, called on countless occasions for a "comprehensive proceeding" in lieu of the Commission actually allowing COMSAT to respond to competition. The Commission has not accepted such arguments in the past, and should not do so now.

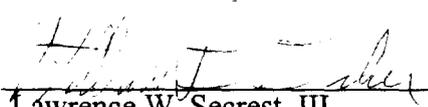
**CONCLUSION**

The Commission should not reconsider its grant of streamlined tariffing relief to COMSAT. PanAmSat's Petition fails to raise any new reason for reconsidering the Commission's Order, is simply another example of PanAmSat's persistent gaming of the regulatory process, and should be dismissed summarily.

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January 30, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 1997, I caused copies of the foregoing Opposition of COMSAT Corporation To Petition For Reconsideration to be mailed via first-class postage prepaid mail to the following:

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