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

APR 4 1997

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1997)

MD Docket No. 96-186

REPLY OF PANAMSAT CORPORATION

PanAmSat Corporation ("PanAmSat"), by its attorneys, submits this reply to the comments filed with respect to the above-referenced Notice of Proposed Rulemaking ("NPRM").

DISCUSSION

I. The Comments Echo PanAmSat's Request For Additional Information Regarding The Regulatory Costs Assigned To Geostationary Space Stations.

The parties to this proceeding share PanAmSat's concern that the Commission failed in the NPRM to provide adequate data regarding its regulatory cost estimates, or the cost accounting models from which those estimates were derived, which form the basis for the proposed 1997 regulatory fees. As GE Americom notes, "the Notice provides virtually no background regarding how the accounting system was designed and implemented... . Without more information, there is no way for prospective fee payers to evaluate the reasonableness of the Commission's reliance on the accounting system it put into place."¹

Cosat similarly complains that "the NPRM does not disclose, explain, or even *summarize* the accounting system from which it derives the proposed fees in this proceeding. The NPRM merely publishes the *results* of the purported cost accounting system. These are merely conclusory numbers having no apparent factual basis... . Nothing in Section 9 of the Act relieves the Commission of the fundamental obligation of an administrative agency to engage in reasoned decision-making and to provide a principled explanation for its actions."²

¹ Comments of GE Americom at 3-5.

² Comments of Cosat at 10 (emphasis in original).

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This fundamental gap in the NPRM has rendered the proposed 1997 regulatory fees opaque to analysis by the parties that will be subject to the Commission's 1997 regulatory fees. As such, implementation of the fee schedule as proposed would be arbitrary and capricious. Moreover, the fees proposed in the 1997 fee schedule for geostationary space stations appear to be completely unrelated to the actual costs of regulating these space stations.³ The Commission should not, therefore, institute the proposed fee schedule without reevaluating, in a process that is transparent to the fee payers, the costs assigned to geostationary satellites.

II. Private Space Station Operators Should Not Be Required To Pay The Regulatory Costs Associated With The Oversight Of Comsat As The U.S. Signatory To Intelsat And Inmarsat.

In addition to its more general problem regarding the paucity of information in the NPRM, Comsat argues that it should not bear the entire burden of paying for the regulatory costs associated with the Commission's oversight of Comsat as the U.S. Signatory to Intelsat and Inmarsat. Comsat claims that these regulatory costs are not incurred for the "benefit" of Comsat, but rather for the benefit of others who compete with Comsat.⁴ This argument, however, is premised on too narrow a construction of the word "benefit" and leads to the absurd conclusion that private satellite operators should pay the costs of regulating a government-protected monopoly with which they must compete.

First, Comsat's assertion that the costs of regulating Comsat as the U.S. Signatory should be borne by the entities with which Comsat competes must fail because it is premised on a flawed interpretation of the law. Comsat claims, correctly, that regulatory fees must be "reasonably related to the benefits provided to the payor."⁵ Comsat incorrectly concludes from this, however, that it should not be required to pay the Commission's regulatory costs associated with Comsat Signatory activities because, "other regulated entities 'benefit' at least as much, if not more, from the Commission's regulatory oversight of Comsat."⁶

³ Section 9(b) of the Communications Act requires the Commission, in deriving its regulatory fees, to ensure that fees assessed on regulated entities are reasonably related to the benefits conferred upon these same entities by Commission regulation. See 47 U.S.C. § 159(b)(1)(A).

⁴ See Comments of Comsat at 5-7.

⁵ *Id.* at 5.

⁶ *Id.*

The “benefits” to which Section 9 refer, however, are not merely those which accrue immediately and directly to the regulated fee payer. If that were the case, very few regulatory costs would be assessable to regulated entities; most regulated entities regard any form of regulation as a cost of doing business rather than a “benefit.” As the term is used in Section 9, however, the “benefits” provided to the payor include those which, although indirect, allow the payor to operate in accordance with the law.⁷ Thus, whether or not Comsat regards the Commission’s regulatory oversight of its activities as a “benefit,” the fact of the matter is that Comsat would not be permitted to compete as it does presently were it not for the fact that the FCC helps to ensure its compliance with the law. This “benefit” — the paramount benefit provided by Signatory regulation — inures only to Comsat.

Moreover, Comsat’s argument must be rejected on the ground that it leads to an absurd result. In essence, Comsat claims that those who are protected from Comsat’s anticompetitive activities by the Commission’s regulatory oversight of Comsat should pay the costs of that oversight.⁸ Comsat would thus turn the regulatory fee requirement on its head. It is precisely because Comsat is allowed to compete with private satellite operators while acting as the U.S. Signatory to Intelsat and Inmarsat that Commission regulation is necessary. Comsat, not Comsat’s competitors, should pay the costs of that regulation.

III. The Commission Rightly Has Excluded From Its Fee Schedule Non-Common Carrier International Bearer Circuits.

Comsat’s final complaint is that the Commission has not included within its proposed 1997 fee schedule non-common carrier international bearer circuits. Although Comsat concedes that the Commission does not have any basis to assign costs on such circuits,⁹ it argues that “non-common carrier satellite and undersea cable facilities are functionally equivalent to those offered by common carriers.”¹⁰ Indeed, Comsat goes further and asserts, without support, that non-common carrier

⁷ See *State of Maine v. Dep’t of Navy*, 973 F.2d 1007, 1013-14 (1st Cir. 1992) (costs of maintaining a state spill response team properly assessable to regulated entities, even though the clean-up of hazardous waste spills inures to the benefit of the general public, because response teams also benefit the regulated entities by helping to “ensure their compliance with state goals and standards for prompt clean-ups”). Indeed, even where a regulated entity never has directly benefited from a regulatory program, the costs of that program may properly be assessed to the regulated entity. *Id.*

⁸ Comments of Comsat at 6 n.7.

⁹ See *id.* at 11.

¹⁰ *Id.* at 12.

satellites often offer capacity in a manner that meets the definition of common carriage under relevant precedent, but do not pay circuit fees only because they have, mistakenly Comsat believes, been classified as private carriers.

Contrary to Comsat's allegation, PanAmSat's experience is that private satellite carriers are careful to tailor their service offerings to comply with the limits of private carriage. Further, whether or not private international bearer circuits are functionally equivalent to common carrier international bearer circuits as a technical matter, they are not equivalent in terms of the regulatory resources they consume. Because non-common carrier circuits are offered on a private basis, they are not subject to the full panoply of Title II regulation by the Commission that applies to the circuits offered by common carriers. Thus, although Comsat views the different treatment of private and common carrier bearer circuits with respect to regulatory fees as "unfair," the two are, for regulatory fee purposes, apples and oranges.

CONCLUSION

For the reasons set forth above and in its initial comments, PanAmSat requests that the Commission reevaluate its cost allocation methodology and lower the regulatory fee to be paid by geostationary space station operators for 1997 to more closely reflect the actual costs of regulating geostationary space stations. Further, the Commission should reject suggestions by Comsat that Comsat's competitors bear the costs of regulating Comsat in its Signatory capacity and that private carriers be treated like common carriers for regulatory fee purposes.

Respectfully submitted,

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April 4, 1997

CERTIFICATE OF SERVICE

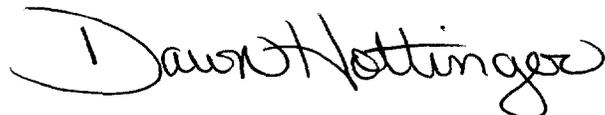
I hereby certify that a true and correct copy of the foregoing Reply of PanAmSat Corporation was sent by first-class mail, postage prepaid, this 4th day of April, 1996, to each of the following:

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