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Federal Communications Commission
Office of Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Assessment and Collection) MD Docket No. 96-186
of Regulatory Fees for)
Fiscal Year 1997)

To: The Commission

REPLY COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom"), by its attorneys, hereby submits its reply to the comments of other parties on the satellite regulatory fees proposed in the Commission's Notice of Proposed Rulemaking in the above-captioned docket, FCC 97-49, released March 5, 1997 ("Notice").

In our initial comments, GE Americom demonstrated that the information provided in the Notice does not sufficiently support the level of regulatory fees that the Commission is proposing to assess against geostationary space stations.¹ Other parties agree that the Notice does not adequately describe the cost accounting system that the Commission relied on in developing the new fee schedule. The Commission must provide additional information about that system and seek comment on it before it takes further action here.

¹ Comments of GE American Communications, Inc., MD Docket No. 96-186 (Mar. 25, 1997) (hereafter "1997 Comments").

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The Commission should adopt the signatory fee proposed to be assessed against Comsat Corporation ("Comsat"). The Commission is authorized and obligated to recover fees for the regulatory activities undertaken related to Comsat's role as signatory to Intelsat and Inmarsat. Comsat's claims that the signatory fees are unlawful and improper have already been rejected by the Commission. Comsat's attempts to shift the burden of signatory-related activities to other parties should also be denied.

I. THE NOTICE DOES NOT SUPPORT THE PROPOSED 1997 REGULATORY FEES FOR GEOSTATIONARY SATELLITES

The Commission clearly has not justified the proposed increase in regulatory fees for geostationary space stations. The Notice relies on a new accounting system to support those increases. However, it provides virtually no information about how the system was implemented or what steps were taken to ensure that costs that do not relate to regulatory activities for operating spacecraft were excluded.²

Other parties agree that the record regarding the new accounting system is inadequate. For example, the Personal Communications Industry Association ("PCIA") notes that:

the Commission has provided no explanation whatsoever of the mechanics and theory of the cost accounting system that it began to use effective October 1, 1995. Interested parties have *no* information for assessing the factors applied by the Commission in deciding how costs are to be

² 1997 Comments at 3-5.

allocated in connection with the enforcement, policy and rulemaking, international, and user information activities performed with regard to the specific categories of fee payors.³

PCIA also observes that the Notice does not permit parties to assess whether costs related to the processing of applications have been excluded from the amounts used to develop regulatory fees.⁴

PanAmSat demonstrates that the level of costs charged to geostationary satellites is implausibly high on its face. Specifically, PanAmSat showed that the cost figure used in the Notice is vastly out of proportion to the regulatory burdens associated with geostationary space stations.⁵ Once launched, satellites remain in orbit for ten years or more, during which time they require minimal regulatory supervision by the Commission.⁶ PanAmSat correctly notes that the vast majority of Commission resources devoted to geostationary satellite services are not related to regulatory activities for in-orbit spacecraft but are devoted to the satellite licensing process and the development of new services.⁷ Costs related to these activities cannot be recovered through regulatory fees imposed on existing satellite operations.

³ PCIA Comments at 5. *See also* PanAmSat Comments at 1 (“it is impossible to properly analyze the basis for the Commission’s fee decision without more data”).

⁴ PCIA Comments at 6.

⁵ PanAmSat Comments at 1, 3-4.

⁶ Comments of GE American Communications, Inc., MD Docket No. 95-3 at 5-7 (Feb. 14, 1995) (hereafter “1995 Comments”).

⁷ PanAmSat Comments at 4; *see also* 1997 Comments at 4-5.

Finally, PanAmSat persuasively demonstrates that the regulatory costs the Commission attributes to geostationary satellite providers are unreasonable relative to the costs attributed to other industry segments.

PanAmSat points out that:

direct costs attributed by the Commission to 41 geostationary satellites are approximately half that attributed to all CMRS services, 1/8th that attributed to IXC's, LECs, and CAPs, nearly \$1 million more than that attributed to VHF television, and several hundred times the amount attributed to signatory activities or to low earth orbit satellites.

PanAmSat Comments at 3. These ratios do not come close to reflecting accurately the regulatory activities required with respect to in-orbit geostationary satellites vis-à-vis other services.

Thus, the results of the Commission's accounting procedures cannot be reconciled with the facts and cast further doubt on the reasonableness of those procedures. The Commission cannot conclude on this record that the proposed 1997 regulatory fee for geostationary satellites is consistent with the text and purpose of Section 9 of the Communications Act.⁸

⁸ Section 9 of the Communications Act requires the Commission to assess and collect regulatory fees in an amount specified by Congress to recover the agency's cost incurred in conducting four specific types of regulatory activities: enforcement, policy and rulemaking, user information services, and international activities. 47 U.S.C. § 159(a).

II. THE COMMISSION IS REQUIRED TO RECOVER SIGNATORY FEES FROM COMSAT

Cosat first challenged the Commission's authority to assess signatory fees in its 1996 Comments.⁹ The Commission expressly rejected Cosat's arguments, adopting a signatory fee over Cosat's objections.¹⁰ Cosat now seeks to re-argue this issue, but presents no new claims or evidence to support its contention that signatory fees are unlawful.¹¹ The Commission here should affirm its 1996 finding that Cosat is required to pay a signatory fee.

Cosat also contends that the Commission has erred by continuing to assign to Cosat alone the regulatory costs associated with Cosat's signatory role.¹² Cosat claims that regulation related to its signatory status "benefits" customers and competitors as much, if not more so, than itself, and hence the regulatory costs also should be passed along to these beneficiaries.¹³ Cosat

⁹ See Comments of Cosat Corporation, MD Docket No. 96-84 (Apr. 29, 1996) (hereafter "1996 Cosat Comments"); Comments of Cosat Corporation, MD Docket No. 96-186 (Mar. 25, 1997) (hereafter "Cosat Comments").

¹⁰ Assessment and Collection of Regulatory Fees for Fiscal Year 1996, 61 FR 36629, 36634-36 (July 12, 1996) (hereafter "1996 Fiscal Assessment") ("[The Commission] reject[s] Cosat's contention that the Signatory fee contravenes Congressional intent reflected in Section 9." *Id.* at 36635. "Cosat is also mistaken that the second sentence is subsection 9(b)(3) limits [the Commission's] authority to establish new fee categories." *Id.* "Further, [the Commission] find[s] no merit in Cosat's argument that [its] proposed Signatory fee constitutes an unauthorized and unconstitutional tax." *Id.*).

¹¹ Cosat Comments at 4-5.

¹² *Id.* at 5-7.

¹³ *Id.*

previously made this incredible assertion in its 1996 comments. It offers no new persuasive evidence to support this claim in its current filing.¹⁴

The Commission has already held that Comsat's assertion is simply not true. In the 1996 Fiscal Assessment, the Commission found that "Comsat benefits significantly from its status as signatory and the regulatory oversight that is necessitated by that status."¹⁵ The Commission cited a number of proceedings it was conducting related to Comsat's: (1) authority to provide services via Intelsat and Inmarsat, (2) authority to participate in the procurement or leasing of various Intelsat and Inmarsat space stations, and (3) authority to participate in certain Intelsat and Inmarsat-associated businesses.¹⁶ Comsat's suggestion that its competitors derive significant benefits from these proceedings cannot be credited. As GE Americom has emphasized, fees should cover the regulatory costs of the cost-causer, and signatory fees should logically be recovered from the cost-causer alone -- Comsat.

Comsat also is mistaken in its claim that the activities the Commission cited in the 1996 Fiscal Assessment as giving rise to the signatory regulatory cost are activities for which Comsat already pays fees or that cannot properly be recovered from Comsat through signatory fees. The application fees and international bearer circuit fees that Comsat pays cover costs related to

¹⁴ *Id.*; see also 1996 Comsat Comments at n.14; .

¹⁵ 61 FR at 36635.

¹⁶ *Id.* at 36635-36 n.15.

application processing and international telecommunication regulation. They do not cover costs incurred with respect to Comsat's unique role as signatory of Intelsat and Inmarsat. As the Commission noted in the 1996 Fiscal Assessment, Comsat is a private, for-profit, U.S. corporation that receives benefits from its special role in international satellite communications.¹⁷ The Commission's assessment of signatory fees, therefore, follows from the fact that the Commission expends significant regulatory resources on Comsat's "for profit" signatory-related activity. It would be unreasonable (indeed, unlawful) for third party space station operators to be required to pay that expense.

CONCLUSION

GE Americom submits that adoption of the proposed geostationary satellite fees cannot be justified on this record. The Commission must provide additional information to describe fully the accounting procedures it implemented and allow parties to comment in these procedures before it takes any further action based on cost information set forth in the Notice. GE Americom also submits that

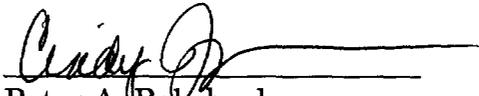
¹⁷ *Id.* at 36665.

the signatory fees are lawful and that the Commission is require to assess and recover fees related to signatory regulatory activity from Comsat and Comsat alone.

Respectfully submitted,

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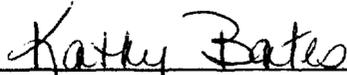
April 4, 1997

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply Comments of GE
American Communications, Inc. were served by hand delivery this 4th day of April,
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