BEFORE THE

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Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of	)	
	)	
Amendment of the Commission's Regulatory Policies To Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Services In the United States	)	IB Docket No. 96-111
	)	
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	)	CC Docket No. 93-23 RM-7931
	)	
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules as it Applies to Services Provided via the INTELSAT K Satellite	)	File No. ISP-92-007

To: The Commission

REPLY COMMENTS OF COLUMBIA COMMUNICATIONS CORPORATION

Columbia Communications Corporation ("Columbia"), by its attorneys and pursuant to Section 1.429(g) of the Commission's Rules (47 C.F.R. § 1.429(g)), hereby replies to the "Opposition of COMSAT Corporation to Petitions for Reconsideration" in the above-captioned proceedings. Consistent with its earlier filings in these proceedings, Columbia concurs with the views expressed by GE American Communications, Inc. ("GE Americom") and PanAmSat Corporation ("PanAmSat") in their Petitions for Reconsideration.

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Discussion

In its Opposition, COMSAT continues to cling to its protected quasi-governmental status, while at the same time demanding that it be treated as if it were just a private competitor in the marketplace.[1] COMSAT posits that its reduced market share on some routes and for some services is sufficient by itself to prove that the market for global satellite service has become fully competitive, and that there is no longer any need to place limitations on COMSAT to protect satellite users and promote competition.[2]

COMSAT's own market share, however, does not begin to tell the tale of its advantaged position in the satellite services industry, which can only be accurately gauged by considering its exclusive relationship with the International Telecommunications Satellite Organization ("INTELSAT").[3] At present, INTELSAT remains the dominant provider of fixed-satellite service ("FSS") on a global basis. Coupled with this pre-eminent position, INTELSAT possesses special status as an

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1/ In a remarkable example of looking a gift horse in the mouth, COMSAT has actually appealed the Commission's decision to grant it conditioned entry to the U.S. domestic market, arguing that in the U.S. Court of Appeals that it should be permitted to serve the U.S. domestic market immediately *without satisfying any conditions*. *See* COMSAT Opposition at 3, *citing* COMSAT Corp. v. FCC, No. 98-1011 (D.C. Cir., filed Jan. 12, 1998).

2/ *See* COMSAT Opposition at 8-9.

3/ COMSAT's efforts to compare its own "small" size with the parent companies of its largest competitors is particularly misleading and hypocritical, in that COMSAT refuses to acknowledge the benefits that it receives from its special association with INTELSAT. COMSAT Opposition at 9 n.20.

international organization that fully insulates it from the reach of domestic antitrust and competition laws in countries were its services are provided.[4] COMSAT, in turn, has derivative immunity in its capacity as U.S. Signatory to INTELSAT.

To the extent that a record has been developed in this proceeding on this issue, that record amply supports a finding that COMSAT benefits from its exclusive treaty-based relationship with INTELSAT, and thus is capable of wielding substantial power in the international satellite services market with favored access both to locations in the geostationary orbital arc and to foreign markets throughout the world. It is for this reason that COMSAT is justifiably "the most federally regulated communications company in the United States"[5] — it is also the only federally-created communications company endowed with special legal privileges and immunities. Accordingly, it is appropriate that COMSAT remain subject to special scrutiny and restrictions until it is weaned from its three-decade diet of entitlements and protections.

As the Commission stated in the DISCO II Order, "INTELSAT, Inmarsat and COMSAT should be subject to the *same rules as their competitors* before COMSAT

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[4] To a significant extent, private satellite operators are permitted into the marketplace at INTELSAT's pleasure — forced to go through a consultation under Article XIV of the INTELSAT Agreement before they can provide service. In no other industry does one operator have such discretion over market entry by new competitors.

[5] COMSAT Opposition at 10.

will be allowed to provide domestic service via INTELSAT or Inmarsat."[6] The Commission thus implicitly recognized that any expanded market access by COMSAT must be keyed to changes in the treatment of all three entities, not just COMSAT alone. Nonetheless, the Commission inexplicably concluded that it would be appropriate for COMSAT to begin offering INTELSAT and Inmarsat capacity for domestic service based only upon waiver of its own immunity and upon a showing that such entry "would promote competition and is otherwise in the public interest."[7]

Bearing in mind that INTELSAT was created for the specific purpose of providing international satellite services, there is no reason to allow this specialized capacity to be converted to other uses absent a change in INTELSAT's traditionally protected status. Columbia continues to believe that only legitimate successor entities that are fully divested of their intergovernmental character and INTELSAT-based advantages, and which compete under the same regulations and laws as other system operators, should be eligible to provide U.S. domestic service. Accordingly, use of INTELSAT capacity for provision of domestic service should be conditioned either on both INTELSAT's and COMSAT's full waiver of their treaty-based privileges and immunities or, better yet, upon the full divestiture and privatization of this capacity in

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[6] DISCO II Order, FCC 97-399, slip op. at 55 (¶ 125) (emphasis in original).

[7] DISCO II Order, FCC 97-399, slip op. at 56 (¶ 126).

such a manner that fosters competition. For this reason, Columbia agrees with GE Americom that the best approach is to consider changes in COMSAT's regulatory treatment "only after changes necessary to eliminate the competitive advantages and market power enjoyed by [INTELSAT and Inmarsat] have occurred."[8/]

Short of that approach, in the event that INTELSAT capacity is authorized for some U.S. domestic use prior to a full, pro-competitive privatization and cessation of the privileged status enjoyed by INTELSAT and COMSAT, lease and sale of such capacity should be permitted only if both COMSAT and INTELSAT waive their privileges and immunities in connection with this business enterprise, a venture that departs entirely from INTELSAT's treaty-protected mission. Under such circumstances, Columbia concurs with PanAmSat's demonstration that domestic services should be allowed only on an unbundled basis and with appropriate accounting safeguards.[9/] COMSAT and INTELSAT ought not be permitted to leverage advantages in the international marketplace to build U.S. domestic business. COMSAT's offering of INTELSAT's treaty-chartered services must therefore remain entirely separate from any ancillary commercial ventures that may be permitted absent a complete, pro-competitive restructuring of INTELSAT.

8/ GE Americom Petition at 5.

9/ *See* PanAmSat Petition at 8-10.

Conclusion

For the foregoing reasons, as well as those stated in the Petitions for Reconsideration filed by GE Americom and PanAmSat, Columbia urges the Commission to reconsider its decision to permit COMSAT to offer U.S. domestic service premised solely on waiver of its own privileges and immunities, without consideration of the benefits that COMSAT will continue to derive through INTELSAT. At a minimum, the Commission should revise its decision to require waivers of immunity by both COMSAT and INTELSAT and to ensure through conditions, such as an unbundling requirement, that any domestic service which COMSAT may be authorized to offer does not harm competition.

Respectfully submitted,

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February 24, 1998

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CERTIFICATE OF SERVICE

I, Lorene J. Miller, hereby certify that I have this 24th day of February, 1998, caused true copies of the foregoing "Reply Comments of Columbia Communications Corporation " to be served by first class mail, postage prepaid, on the following:

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