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

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In the matter of)
)
Policies and Rules for Alternative) IB Docket No. 98-60
Incentive Based Regulation of)
Comsat Corporation)

MAR 1998

COMMENTS OF PANAMSAT CORPORATION

PanAmSat Corporation ("PanAmSat"), by its attorneys, hereby submits these comments regarding the above-referenced Notice of Proposed Rulemaking.

DISCUSSION

The Commission has asked for comment on its proposal to replace rate-of-return regulation of Comsat Corporation ("Comsat") essentially with price cap regulation on those routes and in those markets in which Comsat remains dominant.¹ Although Comsat is dismissive of the routes and markets as to which the Commission found it to be dominant² — satellite-delivered, switched-voice/private-line communications services, occasional-use video service, or both — they cover the United States and 148 other countries and involve a total population of almost 3 billion persons, or roughly half the world's population.

The Commission, therefore, must exercise great care in the manner in which it chooses to regulate Comsat with respect to these routes and markets. PanAmSat does not, as a general matter, object to the Commission's proposal. As usual, however, the details of the Commission's implementation of this new policy will be critical. In particular, there are two threats to competition that the price cap mechanism must be structured to police.

First, price caps should not lock-in Comsat's already monopolistic prices on routes and markets in which Comsat is dominant. Instead, either in the determination of the initial benchmark price caps, or through the use of an annual price deflator or "Consumer Productivity Dividend,"³ Comsat's rates should be driven to competitive levels.

¹ NPRM ¶ 165.

² See, e.g., Comsat Press Release (Apr. 29, 1998).

³ E.g., Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873, 2894 (1989) (requiring AT&T to adjust its rates downward by 3% each year).

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Second, price caps generally are not an effective guard against predatory pricing. As Dr. Leonard Waverman noted in his analysis of Comsat's petition for reclassification, "while price caps are a superior form of regulation to rate-of-return regulation, [they] must be carefully constructed to prevent the regulated firm from using market power (now constrained by tariffs) to raise some rates while lowering others to forestall competition."⁴ For that reason, the Commission should include within its Comsat price cap policy a limit on sudden or large price increases or decreases by Comsat, which could be used in support of predatory practices.⁵

Finally, whatever price caps the Commission adopts, close regulatory oversight of Comsat's accounting practices still will be required to prevent evasion. As a result of the non-dominance order, Comsat now will provide service in "competitive" and monopoly markets pursuant to two different regulatory regimes. The non-dominance order, moreover, eliminated the structural separation requirements that were intended to protect against Comsat using its monopoly power in some markets to gain an anticompetitive advantage in other markets. Absent these structural separation requirements, accounting oversight is the only protection that the public has against Comsat taking unfair advantage of its market power.

If price caps are to provide a meaningful restraint on anticompetitive conduct, they must be carefully tailored and rigorously enforced.

Respectfully submitted,

PANAMSAT CORPORATION

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⁴ Declaration of Leonard Waverman (June 16, 1997) at 12 (attached the Petition to Deny of PanAmSat Corporation, File No. 60-SAT-ISP-97 (filed June 16, 1997)).

⁵ See Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd at 3056 (limiting AT&T's ability to lower certain rates).