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May 29, 1998

MAY 2 9 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: **IB Docket No. 98-60; Policies and Rules for Alternative Incentive Based Regulation of COMSAT Corporation**

Dear Ms. Salas:

Enclosed for filing in IB Docket No. 98-60 you will find an original and nine copies of "**Comments of ABC, Inc., CBS Corporation, National Broadcasting Company, Inc., and Turner Broadcasting System, Inc.**" and also a computer diskette containing the comments in "read only" format. Please date stamp the "stamp and return" copy of the comments for return by the messenger.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Randolph J. May

Randolph J. May

Enclosures

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MAY 29 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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

COMMENTS OF ABC, INC., CBS CORPORATION, NATIONAL BROADCASTING COMPANY, INC., AND TURNER BROADCASTING SYSTEM, INC.

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SUMMARY

ABC, Inc., CBS Corporation, National Broadcasting Company, and Turner Broadcasting System, Inc. (collectively the "Networks") are major users of COMSAT's full-time and occasional use video transmission services in connection with the operation of their respective broadcast and cable networks. Because of their heavy reliance on international satellite services, they have been active participants in the successive proceedings over the past several years engendered by COMSAT's variously-denominated petitions for regulatory relief.

In its April 28, 1998 Order and Notice of Proposed Rulemaking, the Commission proposed to replace traditional rate of return regulation with an alternative incentive-based plan for those COMSAT services, including occasional use video, which it determined remained non-competitive and, therefore, subject to COMSAT's dominant market power. The Networks do not object to implementation of an appropriately-structured incentive-based ("price cap") regime for COMSAT, but they do oppose any price cap regime which is not structured in a manner designed to lead promptly to lower rates for customers of COMSAT's non-competitive services. An appropriately-structured price cap plan must include at least the following elements: (1) no pre-defined expiration period; (2) an aggressive annual downward adjustment to the price cap to account for productivity growth; and (3) a separate basket for occasional use video service.

A plan which contains these elements would provide a basis for COMSAT to benefit from the profit incentives created by the move away from traditional rate of return regulation and for users of COMSAT's services to benefit from the rate reductions created by the productivity adjustments and incentives incorporated into the regime.

BEFORE THE
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In the Matter	)	
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COMMENTS OF ABC, INC., CBS CORPORATION, NATIONAL BROADCASTING COMPANY, INC., AND TURNER BROADCASTING SYSTEM, INC.

ABC, Inc., CBS Corporation, National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (collectively the "Networks"), by their attorneys, hereby submit their comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.[1/] In this proceeding, the Commission is considering replacing traditional rate of return regulation with an alternative incentive-based plan for COMSAT's provision of occasional use video, switched voice, and private line services in markets which have been classified as non-competitive.

I. BACKGROUND

The Networks are major users of COMSAT's full-time and occasional use video transmission services in connection with the operation of their broadcast and cable networks. Because of their heavy reliance on COMSAT's video transmission services, they have been active participants in the successive proceedings over the past several years engendered by COMSAT's

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1/ Order and Notice of Proposed Rulemaking, IB Docket No. 98-60, FCC 98-78, released April 28, 1998 (hereinafter "Order and NPRM"). The Notice was published at 63 Fed. Reg. 2581, May 11, 1998, with initial comments due on May 26, 1998.

variously-denominated petitions for "regulatory relief."[2] In their pleadings, the Networks have explained that while COMSAT's provision of full-time video transmission services has become subject to sufficient competitive pressures to warrant tariff relief, COMSAT remains largely dominant in the provision of occasional use video services.[3] In the April 28 Order and Notice of Proposed Rulemaking, the Commission determined that COMSAT's provision of occasional use service in 142 "single carrier" markets are not subject to competition and that, therefore, in these markets, COMSAT should remain classified as dominant. The Commission also found COMSAT dominant in the provision of certain switched voice and private line service markets. In 55 occasional use markets which the Commission identified as "multiple carrier" and, therefore, competitive, it classified COMSAT as non-dominant.[4]

2/ See, for example, the Comments of Networks in RM 7913, August 25, 1994; Comments of the Networks in File No. 14-SAT-ISP-97, January 17, 1997; Partial Opposition of the Networks, in File No. 60-SAT-ISP-97, June 16, 1997; and Reply of the Networks in File No. 60-SAT-ISP-97, July 18, 1997. COMSAT's various petitions and the FCC orders acting on the petitions are identified at paragraph 1 and note 4 of the Order and NPRM.

3/ The Commission has defined full-time and occasional use services in footnotes 37 and 39 of the Order and NPRM, and the Networks will not repeat those definitions here. It bears emphasis once again, however, that because of the ability to order in short increments and originate and terminate from different geographic points from one day to the next, the occasional service is crucial to the Networks in getting news feeds and other special events programming back to the U.S.

4/ While the Networks are not here seeking reconsideration concerning the Commission's classification of 55 markets as competitive on the basis that they are "multiple carrier," they do wish to point out that they believe the Commission's market power analysis is too simplistic. First, the mere existence of one other competitor in a market (a duopoly) generally does not create effective competition. For example, the GAO, the Department of Justice, and the Commission all agree that the duopoly structure of the cellular market with two facilities-based providers did not create effective competition. First Report on CMRS, 10 FCC Rcd 8844, 8866-67 (1995) (citing DOJ and GAO conclusions). Moreover, even assuming one other competitor has provided service to a market, in order to determine whether such market is, in fact, effectively competitive the Commission should take into account factors such as prices charged by the new entrant, whether the new entrant has access to the infrastructure necessary to access

For those markets in which the Commission determined COMSAT remains dominant, it proposed to replace traditional rate of return regulation with an alternative incentive-based plan. The Commission stated that implementation of such a plan "may establish the proper efficiency incentives for COMSAT, benefit consumers through lower rates in the dominant markets and relieve the Commission from administratively burdensome rate of return regulation of COMSAT in these markets."[5/] While COMSAT had suggested a vague form of three year price cap in reply comments on its reclassification petition, the Commission tentatively concluded that:

> any alternative incentive based regulation plan that we would adopt for Comsat with respect to its services in dominant markets: (a) remain in effect for an indefinite period of time, rather than expiring after three years; (b) allow all users of Comsat's service to non-competitive markets to benefit from a competitive or "transaction" rate rather than the non-discounted tariffed rate that would result from Comsat's uniform pricing commitment; and (c) allow all users of Comsat's service to non-competitive markets to benefit from reduced rates due to increases in efficiency and productivity.[6/]

II. DISCUSSION

The Networks do not object to implementation of an appropriately-structured incentive-based ("price cap") regime for COMSAT, but they do oppose any price cap regime that is

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its satellite from various points in the market, such as the availability of terrestrial microwave or fiber links connecting to the competitor's earth station, and whether the new entrant is treated in a non-discriminatory fashion by the foreign administration. PanAmSat, the operator upon whose presence the Commission relies to find 45 of 55 occasional use markets "competitive," has told the Commission that because of factors such as those cited above, it "has provided primarily full-time video services." Market Power, Market Foreclosure, and INTELSAT, analysis prepared for PanAmSat by Economists Inc., p. 20, February 16, 1998, filed by PanAmSat in File No. 60-SAT-ISP-97, February 24, 1998.

5/ Order and NPRM, at para. 164.

6/ Id., at para. 165.

not structured in a manner designed to lead promptly to lower rates for customers of COMSAT's non-competitive services. The Networks agree with the Commission that COMSAT's vague commitments for a three year period of price stability fall far short of an acceptable incentive-based regime. In the Networks' view, an appropriately-structured price cap plan must include the following elements: (1) no pre-defined expiration period; (2) an aggressive annual downward adjustment to the price cap to account for productivity growth; and (3) a separate basket for occasional use video service.[7/] While each of these elements will be discussed briefly below, the Networks emphasize that they only support an appropriately-structured price cap regime that contains all of them.

A. Indefinite Term

COMSAT's earlier proposal for a limited three year rate cap misconstrues the nature of price cap regulation. Price cap regulation is an alternative form of regulation for a carrier's services in which it retains dominant market power, not a form of "streamlined" regulation for services in which it is non-dominant.[8/] There is no basis for necessarily assuming that COMSAT will not remain dominant for an indefinite period in the markets in which it is presently dominant. In the Networks' view, COMSAT is likely to remain dominant in the occasional service marketplace for the foreseeable future, and there is no basis for present speculation concerning when it may be

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7/ Again, occasional use service is used throughout in conformance with the definition set forth at note 39 of the Order and NPRM to include short-term services up to three months.

8/ In an earlier price cap proceeding for AT&T and LECs, the Commission said "the purpose of this proceeding is to structure an effective regulatory system for dominant carriers. . . " Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873, 2943 (1989).

appropriate to eliminate price cap regulation. Of course, as conditions warrant, it will be appropriate for the Commission to reexamine COMSAT's market power and regulatory status.

B. Downward Productivity Adjustment

Probably the most important element of an acceptable price cap regime is adoption of an appropriate downward adjustment factor (termed an "x-factor" in the other price cap regimes and in the Order and NPRM[9/]) to account for the productivity growth inherent in COMSAT's provision of satellite services. The Networks asserted in their earlier comments that the lack of a downward adjustment x-factor in COMSAT's price cap proposal constituted a major defect.[10/] The Commission appears to agree with the Networks in that it tentatively concludes any price cap regime it would adopt must ensure that COMSAT's customers in non-competitive markets "benefit from reduced rates due to increases in efficiency and productivity."[11/]

In its 1997 order reviewing and revising the price cap regime for the dominant local exchange carriers, the Commission adopted an annual x-factor productivity adjustment of 6.5%.[12/] While the Networks are not aware at this time of productivity growth studies specific to the satellite industry, it is logical to assume, in light of the especially rapid advances in satellite technology, that

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9/ See Order and NPRM, at para. 146 and note 302.

10/ See Partial Opposition of Networks, June 16, 1997, at 26: ("[T]he Commission should adopt a productivity 'x-factor' as part of a price cap formula that will drive down end user rates on a year-by-year basis in recognition of the historical productivity increases which have characterized the satellite industry."); Reply of Networks; July 18, 1997, at 8: (The Commission should adopt "a binding requirement that COMSAT reduce the rates for its occasional use and short-term video and audio transmission services during the price cap period by a pre-determined productivity factor applied annually.").

11/ Order and NPRM, at para. 165.

12/ Price Cap Performance Review for Local Exchange Carriers, 12 FCC Rcd 16642, 16647 (1997). See also Order and NPRM, at note 302.

an appropriate x-factor would be in excess of 6.5%. After all, the local exchange carriers' plant includes billions of dollars of embedded copper wire subscriber loop that is likely to remain in use for some time to come before being replaced by more efficient broadband digital technologies. With the increasing implementation of digital compression technologies in the satellite industry which allows the derivation of additional channels from the same bandwidth, productivity gains can be expected to exceed the 6.5% per year x-factor adjustment the Commission adopted last year for the local exchange carriers. The technological advances which are forecast to lead to much more efficient capacity utilization of satellite bandwidth and other cost savings point towards adoption of an aggressive x-factor if users of COMSAT's dominant services are going to benefit from price cap regulation.

Moreover, as the Commission itself pointed out, despite ongoing productivity gains, COMSAT has not reduced its occasional use rates since 1995.[13/] In light of this fact, the Commission should take pains to adopt an aggressive x-factor to ensure that COMSAT's occasional use customers at the outset receive the real benefits of productivity growth which have not yet been translated into rate reductions.

C. **Separate Occasional Use Basket**

As the Commission observed, there was nothing in the record relating to COMSAT's rate freeze proposal concerning the appropriate number of price cap baskets. Service baskets are designed to prevent the carrier from cross-subsidizing services with different price elasticities of

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13/ Order and NPRM, at note 300.

demand, i.e., different degrees of competitive pressures.[14] The Networks propose that a separate basket be established for occasional use video service.[15]

As the Commission has explained in the context of establishing price cap regimes for AT&T and the domestic local exchange carriers, the purpose of placing services in separate baskets with their own price ceilings is to reduce the possibility that users of relatively less competitive services (i.e., services with less price elasticity of demand) will not realize the full benefits of incentive regulation compared to the users of relatively more competitive services.[16] Absent appropriately-delineated service baskets, the carrier has an incentive to reduce the rates for the relatively more competitive services and increase the rates for relatively less competitive services, while still remaining within the overall price cap which encompasses all services.[17] In other words, as the Commission has put it, placing a cap on separate baskets "prevents cross-subsidization of services outside the basket by those inside."[18]

In the Networks' view, occasional use video service is presently less competitive than switched voice and private line services and is likely to remain so for the foreseeable future. One good indicator that occasional video service is subject to less competitive pressures is the fact that,

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14/ Order and NPRM, at note 303.

15/ In light of the way the Commission treated switched voice and private line services for purposes of its market power analysis, it appears these services could be placed together in one basket.

16/ Even though all of the services subject to the price cap regime are classified non-competitive, some may be subject to more competitive pressures than others.

17/ Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873, 3037-3053 (1989).

18/ Id., at 3038.

according to the Commission's own approach, presently there are 142 non-competitive occasional use markets and 63 non-competitive switched voice and private line markets. Thus, according to the Commission's analysis, the marketplace for switched voice and private line services is further along on the road towards emergent competition than the marketplace for occasional video service. (This is not to say, of course, that COMSAT is non-dominant in the provision of these voice and private line services.)

The Commission's own market power analysis provides further evidence why occasional use services are likely to remain less competitive than switched voice and private line services.[19/] Presently, fiber optic cable plays an insignificant role in the provision of occasional use (and even full-time) video services, so these services are almost entirely dependent upon satellite operators.[20/] In contrast, the Commission pointed out that fiber optic systems already carry considerably more switched voice and private line services traffic than do satellite systems.[21/] It seems likely that switched voice and private line services will continue to benefit more rapidly from deployment of fiber optic cable than will occasional video service in light of the fact that, by its very nature, occasional video requires ubiquitous coverage from unpredictable and often remote locations where fiber cable will not be installed.

Furthermore, because providers of switched voice and private line services almost always have business plans which depend upon long-term commitments, they are more likely to undertake the necessary investments in facilities which facilitate the development of competitive

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19/ See note 4 supra for an explanation as to why the Networks believe the Commission's market power analysis was overly simplistic in any event.

20/ Order and NPRM, at para. 57.

21/ Id., at para. 56.

alternatives. Again, by definition, occasional service, involves only extremely short-term commitments, and ones that are unpredictable in terms of whether, if at all, needs for service may arise again in the same place. The nature of such short-term commitments acts as a disincentive for carriers to invest the resources and time necessary to develop competitive alternatives.

III. CONCLUSION

For the foregoing reasons, the Commission should establish an incentive-based ("price cap") regulatory regime for COMSAT's provision of services in dominant markets which contains each of the elements discussed herein. Absent the development of a price cap regime which achieves near-term benefits for users of COMSAT's services through reduced rates and increased innovation and service quality, the Commission should retain traditional rate of return regulation.

Respectfully submitted,

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May 29, 1998

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CERTIFICATE OF SERVICE

I, Teresa A. Pumphrey, do hereby certify that true and correct copies of the foregoing, "Comments of ABC, Inc., CBS Corporation, National Broadcasting Company, Inc., and Turner Broadcasting System, Inc." were served by hand or first-class U.S. mail, postage prepaid, this 29th day of May, 1998, on the following:

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