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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In re	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 1999	)	MD Docket No. 98-200
	)	

REPLY COMMENTS OF LORAL SPACE & COMMUNICATIONS LTD.

Loral Space & Communications Ltd. hereby files reply comments in response to the above-captioned proceeding[1] which seeks comments and suggestions for revising the Schedule of Regulatory Fees for FY 1999. Over the past few years, the Commission has sharply increased the annual regulatory fees for operational geostationary ("GSO") space stations and international bearer circuits and imposed international bearer circuit fees on non-common carrier satellite operators.

The Commission's fee increases for space stations and international bearer circuits appear to bear no relation to the actual cost of regulating existing satellite operators and have yet to be justified on the record. Furthermore, the extension of the international bearer circuit fee to non-common carrier satellite operators violates the Communications Act. The Commission should reduce its regulatory fees for space stations and international bearer circuits (or provide specific cost justification for the proposed increases on the record) and exclude from its fee schedule international bearer circuits provided by non-common carrier satellite operators. Loral believes the concept of a "new services" fee category, in which the costs associated with new services

1 In re Assessment and Collection of Regulatory Fees for Fiscal Year 1999, *Notice of Inquiry*, MD Docket No. 98-200 (rel. December 4, 1998) ("NOI").

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would be assessed on all feeable categories, has merit,[2] and supports the creation of a new fee category that imposes annual regulatory fees on Comsat.

I. The Recent Fee Increases for Space Stations and International Bearer Circuits Bear No Relation to the Actual Cost of Regulating Satellite Operators and Must Be Justified on the Record

Section 9(b) of the Communications Act, as amended, requires that the regulatory fees imposed upon Commission licensees be "reasonably related to the benefits provided to the payor of the fee by the Commission's activities. . . "[3] The regulatory fees currently imposed for space stations and international bearer circuits fail to satisfy this requirement. In 1998, the Commission increased the annual fee for GSO space stations from $97,975 to $119,000 per operational satellite.[4] This was a 21% increase over the 1997 fee and results in a 69% increase over a two year period.[5] The fee for international bearer circuits was also increased by 20% (from $5 per circuit to $6 per circuit), on top of a 20% increase in fees imposed in 1997 - - a 50% increase in only two years.[6]

These increases are unreasonable, unjustified, and are not reasonably related to the benefits provided to existing satellite operators. Once a satellite is authorized, the Commission

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2 NOI at ¶ 4, ¶¶ 16-18.

3 47 U.S.C. § 159(b)(1)(A).

4 In re Assessment and Collection of Regulatory Fees for Fiscal Year 1998, *Report and Order*, 13 FCC Rcd. 19820 at Attachments F and G (1998) ("1998 Fees Order").

5 In 1997, the GSO satellite fee was increased from $70,575 to $97,975. In re Assessment and Collection of Regulatory Fees for Fiscal Year 1997, *Report and Order*, 12 FCC Rcd. 17161 at Attachments F and G (1997) ("1997 Fees Order").

6 1998 Fees Order at Attachments F and G. In 1997, the fee for international bearer circuits was increased from $4 to $5. 1997 Fees Order at Attachments F and G.

engages in very little oversight of the licensee.[7] The majority of Commission resources with respect to GSO operations are expended on satellite applications, for which an $85,045 application fee, per satellite, is currently required.[8] The costs associated with satellite applications (e.g., international coordination activities) are to be recovered from these application fees, not annual regulatory fees. Satellite operators have expressed concern that the costs associated with rulemakings and other proceedings regarding the development of new satellite services are improperly assessed on existing GSO satellite operators.[9] Consistent with the statute, the regulatory fees assessed on GSO operators must have a direct correlation to the costs incurred in regulating existing GSO operators. Loral believes the concept of a "new services" fee category pursuant to which the fees attributable to such services will be recovered proportionately from all fee payers has merit.[10] However, the details of this new category (e.g., the definition of a "new service" and allocation methods) have yet to be proposed and would need to be subject to comment by industry participants before it is implemented.

The recent NPRMs and Orders which have increased the satellite-related regulatory fees have been deficient in that they do not provide any evidence that the fee increases were in any way related to increases in the Commission's workload in regulating the applicable Commission licensees or were consistent with the Congressional-imposed costing methodology used to derive such fees. Although the Act requires use of a specific costing methodology to determine

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7 As noted by GE Americom, the Commission "has substantially deregulated satellite services, and most of these services are now offered on a non-common carrier basis" thus eliminating the need for significant ongoing Commission oversight. See Comments of GE Americom at 4. See also Comments of PanAmSat at 1.

8 47 C.F.R. § 1.1107(9)(a).

9 See Comments of PanAmSat at 2; Comments of GE Americom at 3.

10 See Comments of GE Americom at 5; Comments of PanAmSat at 2.

applicable fees,[11] none of the recent fee NPRMs or Orders disclose or explain how this methodology was utilized to establish each applicable fee. Further, the NPRMs and Orders fail to include any description of increased regulatory activities, let alone activities that would bear a reasonable relation to a 69% increase in fees. Absent such disclosures and any substantive analysis of the costing methodology involved, it must be assumed that the increases result in fees that bear no relation to the benefits conferred on the paying licensees. As such, any such increases would be in contravention of the statute as well as arbitrary and capricious.[12]

II. The Commission Should not Include Satellite Non-Common Carrier International Bearer Circuits in its Fee Schedule

The FCC should use the instant proceeding to revisit its erroneous conclusion to assess international bearer circuit regulatory fees on non-common carrier satellite operators.[13] Section 9 of the Communications Act provides that "carriers" are required to pay regulatory fees based on the number of international bearer circuits utilized that year.[14] The term "carrier" is specifically defined in the Communications Act as a "**common carrier**," or a "person engaged as a **common carrier** for hire. . . ."[15] Therefore, the Commission has authority to collect international bearer circuit fees only from common carriers. Given this, arguments that common carrier and non-

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11 47 U.S.C. § 159(b)(1)(A).

12 The lack of a direct nexus between the regulatory fees imposed and the benefits conferred render the fees outside the requirements of Section 9(b)(1)(A). Cf. NCTA v. U.S., 415 U.S. 336 (1974).

13 1998 NPRM Comments of PanAmSat at 4-5; 1998 NPRM Comments of Columbia at 7-9; 1998 NPRM Comments of Loral at 4-5.

14 47 U.S.C. § 159(g).

15 47 U.S.C. § 153(10) (emphasis added).

common carrier satellite operators are allegedly "functionally identical" or that some oversight of international bearer circuits is somehow required are legally irrelevant.[16]

The Commission's authority to amend the statutory fee schedule is expressly limited not only by Section 9(b)(1), governing appropriate costing procedures, but also by Section 9(b)(3) which allows the FCC to "add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law."[17] In other words, the underlying regulatory treatment of a service must first change -- independent of Commission fee collection concerns -- in order to permit agency reclassification of services for the purpose of fee collection. In the 1998 Fees Order,[18] the Commission rejected the arguments raised by various satellite commenters and altered the fee classification to include non-common carrier satellite international bearer circuits independent of any underlying regulatory reclassification or rulemaking that might justify the fees or by any change in the Communications Act.[19]

PanAmSat has raised these issues in its comments on the NOI[20] and Loral believes that the Commission should revisit the decision it made in the 1998 Fees Order because of its

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16 1997 Fees Order at ¶ 67.

17 47 U.S.C. § 159(b)(3). See 1998 NPRM Comments of Columbia at 8; 1998 NPRM Comments of Loral at 5. Contrary to the Commission's assertions in its 1998 Fees Order, it may not amend the Schedule of Regulatory Fees if it "deems such amendment necessary in the public interest." 1998 Fees Order at ¶ 62 (1998).

18 1998 Fees Order at ¶¶ 57-63.

19 The courts have made clear that this is not permissible under the plain terms of Section 9. See Comsat Corp. v. FCC, 114 F.3d 223 (D.C. Cir. 1997) (reversing the FCC's attempt to impose a signatory fee on Comsat where no rulemaking proceeding had been held to support the new fee category).

20 Comments of PanAmSat at 2-7.

discriminatory result. The Commission justified the imposition of regulatory fees on non-common carrier satellite international bearer circuits on various grounds, including the fact that it has "spent considerable time representing non-common carrier satellite operators in international forums."[21] Presumably, a large portion of the costs associated with these activities are recovered from annual space station regulatory fees collected from operators of non-common carrier satellites.

The economic penalty of this double recovery is further illustrated by the discrepancy between the regulatory treatment of non-common carrier undersea cable operators and international non-common carrier satellite operators. Non-common carrier undersea cable operators are required to pay regulatory fees for international bearer circuits as are international non-common carrier satellite operators such as Loral Orion and PanAmSat. However, international satellite operators also pay the substantial annual per space station regulatory fee of $119,000 per operational satellite. Undersea cable operators pay no annual fees for their underlying facilities.[22]

The nexus proffered by the Commission between the oversight required of international bearer circuits and the fee imposed is vague, at best. It is unclear what oversight, separate and distinct from the oversight that would be included in the space station regulatory fee, is required for international bearer circuits provided by non-common carrier satellite operators. Without disclosure of the Commission's regulatory fees cost methodology or a detailed description of the

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21 1998 Fees Order at ¶ 63.

22 Non-common carrier international satellite operators also pay a per-satellite application fee of $85,045 while non-common carrier undersea cable operators pay an application fee of only $12,975. 47 C.F.R. § 1.1107(9)(a) and § 1.1107(2)(b)(ii).

respective regulatory activities conducted by the Commission for these various services, the nexus will remain unclear.

III. The FCC Should Impose Regulatory Fees on Comsat

Regulatory fees must be assessed equitably on Commission licensees to accurately reflect "the benefits provided to the payor of the fee by the Commission's activities."[23] The Commission has previously concluded that the significant costs of regulating Comsat are being assessed against fee payers other than Comsat.[24] Comsat competes directly with other U.S. satellite operators subject to the Commission's regulatory fees but is given a distinct advantage over these competitors in that it is not required to bear its fair share of the regulatory fee burden imposed on all other licensees.[25] Indeed, the Commission has determined that "Comsat benefits significantly from its status as signatory and the regulatory oversight that is necessitated by that status."[26] The Commission should revise its fee structure to ensure that Comsat does indeed pay, in regulatory

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23 47 U.S.C. § 159(b)(1)(A).

24 See In re Assessment and Collection of Regulatory Fees for Fiscal Year 1996, *Notice of Proposed Rulemaking*, 11 FCC Rcd. 16515 at ¶ 44 (1996) ("1996 Fees NPRM") (proposing to establish a Signatory fee for Comsat "because [the FCC's] geosynchronous space station fee now recovers a significant amount of costs directly attributable to" the Commission's oversight of Comsat). In the 1996 Fees NPRM, the Commission noted that the Signatory fee would recover the costs attributable to Signatory oversight and would permit the Commission to reduce the space station fee. Because this fee category was struck down by the D.C. Circuit Court on procedural grounds, it appears that Comsat-related fees are currently being improperly assessed as part of the GSO space station fee. See Comsat Corp. v. FCC, 114 F.3d 223, 228 (D.C. Cir. 1997).

25 See Comments of GE Americom at 7; Comments of PanAmSat at 8.

26 1996 Fees Order at ¶ 45. The Commission has previously indicated that almost 15% of the costs attributable to space station regulation were directly related to the regulation of Comsat. Id.

fees, an amount "reasonably related to the benefits provided to the payor of the fee by the Commission's activities. . . "[27]

There is no legal bar to the imposition of regulatory fees on Comsat.[28] As stated above Section 9(b)(3) allows the FCC to "add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law" and the D.C. Circuit Court has indicated that if the Commission followed the appropriate procedures, it may establish a new fee category for Comsat.[29] Consistent with that decision, Loral supports the prompt initiation of a formal rulemaking to establish a regulatory regime for Comsat and a correlating fee category to recovery the costs associated with such regulation[30] that are not already being recovered under the Commission's current fee Schedule.

IV. Conclusion

For the reasons set forth above, Loral requests that the Commission reevaluate the process by which it has imposed fee increases on space stations and international bearer circuits to lower the fee imposed to reflect the actual costs of regulating these services. Loral also requests that the Commission eliminate satellite non-common carrier international bearer circuits from its fee schedule, impose regulatory fees on Comsat and, subject to further comment, explore a "new

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27 47 U.S.C. § 159(b)(1)(A).

28 See Comments of GE Americom at 6-8; Comments of PanAmSat at 7-13.

29 Comsat Corp. v. FCC, 114 F.3d 223, 228 (D.C. Cir. 1997).

30 See Comments of GE Americom at 8.

services" fee category in which the costs associated with new services would be assessed on all feeable categories.

Respectfully submitted,
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