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May 5, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

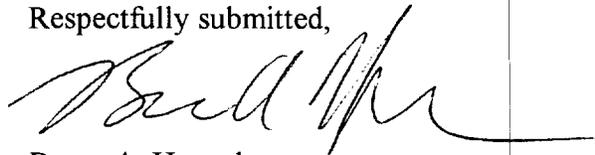
Re: In the Matter of Policies and Rules for Alternative Incentive Based  
Regulation of COMSAT Corporation  
IB Docket No. 98-60

Dear Ms. Salas:

COMSAT Corporation, through its COMSAT World Systems business unit and in accordance with Section 1.429 of the Commission's Rules, files herewith an original and eleven copies of the "Opposition of COMSAT Corporation to Petition for Reconsideration" in the above-captioned proceeding. An additional copy is enclosed as well; please date stamp this copy and return it to the courier.

Any questions should be directed to the undersigned.

Respectfully submitted,



Bruce A. Henoch  
General Attorney

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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 )

TO: The Commission

**OPPOSITION OF COMSAT CORPORATION TO  
PETITION FOR RECONSIDERATION**

COMSAT Corporation, through its COMSAT World Systems business unit (“COMSAT”), hereby files its Opposition to the Petition for Reconsideration filed by CBS Corporation, National Broadcasting Company, Inc., Turner Broadcasting System, Inc., and The Walt Disney Company (on behalf of its subsidiary ABC, Inc.) (collectively, the “Networks”) in the above-captioned proceeding.<sup>1</sup>

**Introduction**

The Networks in their Petition seek reconsideration of the Commission’s February 1999 Order implementing an incentive regulation plan for COMSAT’s “single carrier route” occasional-use video traffic, for which COMSAT is still classified as a dominant carrier.<sup>2</sup> The Commission’s

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<sup>1</sup> Petition for Reconsideration by CBS Corporation, National Broadcasting Company, Inc., Turner Broadcasting System, Inc., and The Walt Disney Company, IB Docket No. 98-60, (filed March 11, 1999) (“Petition”).

<sup>2</sup> *In the Matter of COMSAT Corporation Policies and Rules for Alternative Incentive Based Regulation of COMSAT Corporation*, Report and Order, IB Docket No. 98-60, FCC 99-17 (released February 9, 1999) (“Order”). The “single carrier route” markets are also referred to as “non-competitive” markets.

plan provided, *inter alia*, that COMSAT would no longer be subject to rate of return regulation for its single carrier route occasional-use video traffic. Rather, COMSAT would be required to implement an immediate four percent rate reduction for its occasional-use video services for both competitive and non-competitive routes, refrain from raising rates for such services for an indefinite period, and apply any tariff reductions in competitive markets to rates in non-competitive markets. The Networks urge the Commission to require, in addition to these commitments, an annual four percent decrease for single carrier route occasional-use video services, and to “set forth more fully” the procedures that COMSAT must adhere to for requesting that a “single carrier route” market be reclassified as competitive.

Each of the issues raised in the Networks’ Petition was addressed in detail in the Commission’s Order, and the Networks bring forth no new information or arguments in support of their contention that the Order should be reconsidered. The Commission’s treatment of single carrier route switched service and occasional-use video services is amply supported by the record in this proceeding. Besides benefitting from an immediate four percent reduction in rates on *all* routes, users of COMSAT’s single carrier route occasional-use video services will, under the Commission’s plan, pay the same transactional rates as customers on the most competitive routes. The marketplace will thus provide COMSAT with all of the incentive needed to ensure that all of its occasional-use video rates -- for both multi- and single-carrier route traffic -- remain at fully competitive levels. In addition, the Commission’s plan for reclassification of markets as they become competitive is logical and workable, and the Networks provide no valid reason why that decision needs to be reconsidered.

**The Networks' Petition for Reconsideration Should Be Denied.**

The Networks argue in their Petition that COMSAT's single carrier route occasional-use video service should be subject to the same annual four percent rate reduction that is now required of COMSAT's single carrier route switched voice service.<sup>3</sup> As an initial matter, COMSAT notes that -- as we discussed in our Reply Comments in this proceeding -- the sum total of *all* of the single carrier route occasional-use video services by the four networks in question was approximately \$46,000 in 1998. Assuming that each of the Networks used 25 percent of this total, or \$11,500, then each of the Networks filed this Petition for the sole purpose of obtaining an additional discount of about \$460 in 1999.<sup>4</sup>

According to the Networks, occasional-use video service is not treated "equitably" in the Commission's Order, and the Commission is treating users of the two services in a different manner "without any rational basis."<sup>5</sup> The Networks also state that requiring only a one-time four percent rate reduction "does not provide COMSAT with ongoing incentives to increase productivity" and is inconsistent with "the concept at the heart of" the incentive-based regulatory

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<sup>3</sup> Petition at 3. The Order generally referred to non-competitive switched voice markets as "thin routes," and non-competitive occasional use video markets are "single carrier" routes.

<sup>4</sup> This amount can only be a fraction of the total cost in legal fees of filing this Petition (and presumably responding to this Opposition). Given this fact, the Networks raise an intriguing question about their continuing interest in this matter.

Even compounding the four percent savings over, say, five years yields very little in the way of savings. For example, even assuming that the Networks' single carrier route usage does not decline over the next five years (and it *has* been declining rapidly over the past few years, from \$59,000 in 1997 to \$46,000 in 1998, a drop of 22 percent), the savings to each network in the year 2003 would be about \$2,100. Given the fact that the Networks' single carrier route usage has been rapidly declining each year, however, the savings in five years would probably be far less.

<sup>5</sup> *Id.*

regimes governing the (multi-billion dollar) businesses of AT&T and the local exchange carriers (“LECs”). The Networks are merely rehashing arguments they have made previously to the Commission -- and that the Commission rejected -- in this proceeding.

First, the Networks’ claim that the Commission’s distinction between occasional-use video service and switched voice service is “without any rational basis” is simply incorrect. In fact, the Commission thoroughly evaluated a number of important facts to support this distinction.<sup>6</sup> For example, the Commission discussed the fact that COMSAT showed in its comments that occasional-use video, unlike switched voice service, is a high-cost, inefficient, short-term service. Unlike switched voice service, occasional-use service is unpredictable and requires capacity to be reserved, often lying fallow. The nature of occasional-use video -- with the large amount of analog traffic and the difficulty in achieving transponder fill factors -- also makes “productivity gains” very difficult to achieve, in contrast to other services such as switched voice where productivity gains are expected on a regular basis.

In addition, whereas with switched-voice services approximately 80 percent of the single carrier route service is taken by the three largest interexchange carriers pursuant to carrier-to-carrier agreements, *all* of the occasional-use single carrier route service is purchased pursuant to tariff, which guarantees that *all* occasional-use customers, on both the competitive and non-competitive routes, pay the same rates no matter how much they use the service. The four percent annual reduction in rates for switched services was specifically implemented to ensure that smaller customers would be able to benefit even though they do not qualify for the volume discounts enjoyed by the largest users, a situation that does not exist with occasional-use video.

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<sup>6</sup> Order at ¶¶ 26-31.

Because the overwhelming majority of COMSAT's occasional use traffic (approximately 77 percent) takes place on the competitive routes, it simply would not make any sense for COMSAT to raise all of its occasional-use video rates above competitive levels simply to eke out a little extra profit on the small amount of remaining traffic on the single carrier routes.

This fact also belies the Networks' argument that "a one-time rate reduction does not provide COMSAT with ongoing incentives to increase productivity." To the contrary, because the rates for the small number of single carrier routes are actually set according to the market conditions on the competitive routes, COMSAT will always have an ongoing incentive to increase productivity (to the extent possible) and lower prices in order to remain competitive on these routes, and the diminishing number of single carrier route customers will always enjoy the benefits of this progress.

The Networks also argue that the Commission "may have been swayed" to accept COMSAT's pricing proposals because of the service's relatively small size. This conclusion is simply not supported by the Order. Nowhere in the Order does the Commission state that it is applying a different standard for occasional-use video because of the small size of this service. Rather, as noted above, the Order clearly sets forth the agency's reasoning.<sup>7</sup>

Finally, the Networks state that the Order does not explain the procedures pursuant to which occasional-use video customers would be able to challenge a petition for reclassification of the single carrier routes by COMSAT, and they urge the Commission to "establish" such

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<sup>7</sup> Of course, even if the Order were based in part on the small size of the service in question, this *would* be a relevant issue. There is always a cost to regulation that must be weighed against the potential benefits. The fact that the service is a very small one means that any benefits would be minimal, making regulation much more difficult to justify.

procedures.<sup>8</sup> The Networks urge the Commission to require COMSAT to provide its customers with written notification of such a petition, to put such petitions on public notice, and to give interested parties 30 days to comment. What the Petition does is essentially rehash the Network's request in an earlier pleading that the Commission initiate a formal notice-and-comment rulemaking proceeding -- no matter how they label it now -- and the Commission in the Order specifically rejected such an approach as "overly burdensome and unnecessary."<sup>9</sup> The Commission stated that, even in the absence of such a formal proceeding, "parties would have the opportunity to challenge" a petition by COMSAT by either "refuting the evidence submitted by COMSAT or showing that the particular market at issue has unique characteristics that would allow COMSAT to exercise market power . . ."<sup>10</sup> These procedures will provide a full and fair opportunity for interested parties such as the Networks to oppose any petitions by COMSAT without imposing unnecessary and inflexible preconditions. The Commission's Order in this respect is well-considered and appropriate, and the Networks' request to implement protracted procedures -- which would serve only to delay the process without providing any benefits -- should be denied.

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<sup>8</sup> Petition at 7.

<sup>9</sup> Order at ¶ 38.

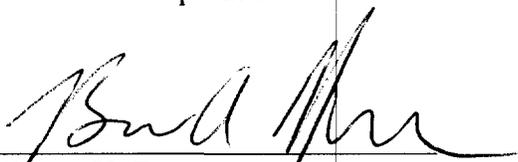
<sup>10</sup> *Id.* at ¶ 40.

**Conclusion**

For the reasons discussed herein, the Petition for Reconsideration filed by the Networks should be denied.

Respectfully submitted,

COMSAT Corporation



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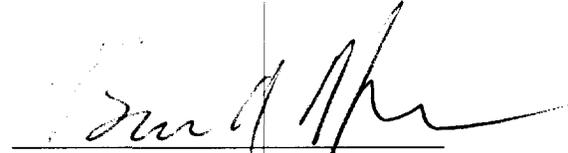
Its Attorneys

May 5, 1999

**Certificate of Service**

I, Bruce Henoch, certify that I mailed a copy of the foregoing "Opposition of COMSAT Corporation to Petition for Reconsideration" on this date, postage prepaid, to the following:

Randolph J. May  
Sutherland, Asbill & Brennan LLP  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2404



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Bruce A. Henoch

May 5, 1999