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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUL 11 2000

In the Matter of)	
	)	FCC MAIL ROOM
COMSAT CORPORATION)	
Maritime Telecommunications Network,	)	1-SAT-ISP-96
Inc., and William L. Whitely Petitions)	
for Reconsideration)	
PanAmSat Corporation Application	)	99-SAT-ISP-96
for Review)	
Cosat Corporation Notification of	)	31-SAT-ISP-97
Corporate Reorganization)	
Cosat Corporation Notification of	)	196-SAT-ISP-97
Corporate Reorganization)	
)	
WILLIAM L. WHITELY)	
Request for Declaratory Ruling	)	117-SAT-DR-96
)	
WILLIAM J. HALLENBECK)	
Request for Declaratory Ruling	)	118-SAT-DR-96
)	
COMMITTEE TO RESTRUCTURE)	
THE INTERNATIONAL SATELLITE)	
ORGANIZATIONS)	
Petition to Enjoin Cosmat Payment of	)	64-SAT-DR-97
Dividends from Retained Earnings, as amended)	
Emergency Petition to Enjoin Cosmat	)	65-SAT-DR-97
from Using Legal Process, as amended)	
)	
BELCOM MINORITY SHAREHOLDERS)	
AND CLAIMANTS COMMITTEE)	
Petition for Investigation and Issuance of a)	
	)	73-SAT-DR-97
Declaratory Ruling)	
)	
PANAMSAT CORPORATION)	
Petition to Reopen Changes in the Corporate	)	CC Docket No. 80-634
Structure and Operations of the)	
Communications Satellite Corporation)	

RESPONSE TO REPLY OF COMSAT CORPORATION AND
PETITION FOR DIRECTED RULING BASED ON
ADMISSION AGAINST INTEREST BY COMSAT CORPORATION

Litigation Recovery Trust, William J. Hallenbeck and William L. Whitely
("Petitioners") file this Petition with the Commission seeking its immediate intervention
based on the admission against interest filed as a reply by Cosmat Corporation

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Commission as required pursuant to 47 USC § 221(c)(8). After a review extending over a seven month period, the Commission placed the matter on public notice commencing a Declaratory Relief proceeding on its own motion (FCC 118-SAT-DR-96).

In replying to the Commission's notice, Comsat admitted that it had not made application for and secured the advance approval of the Commission to any of its series of purchases of BelCom stock. Comsat took the position that such prior approval was not required because its actions were authorized pursuant to the capitalization approval process established by the Commission.³ Comsat offered no independent legal authority in support of this proposition. A response to Comsat filed by Mr. William J. Hallenbeck challenged the Comsat position by noting that the capitalization approval process had not been adopted to address such third party stock purchases by Comsat (as defined in 47 USC § 221 (c)(8)), but rather had been strictly limited to Comsat's capital raising process. The Hallenbeck filing noted that the Satellite Act expresses the intent of Congress to require the Commission to make a dual finding that any proposed third party stock purchases by Comsat are (1) consistent with the objectives of the Satellite Act, and (2) found to be in the public interest, convenience and necessity.

The Commission issued a ruling on February 3, 1998 (*In Re Comsat Corporation*, 97-422)(the "Consolidated Ruling") which addressed numerous petitions pending before the Commission dealing with Comsat. In this ruling, among other things, the Commission dismissed the BelCom stock purchase Declaratory Relief proceeding. The Commission ruled as follows:

Prior to 1983, the Commission reviewed Comsat stock issuances and borrowings as a requirement of its statutory responsibility under the Satellite Act. In 1983, it approved a "capitalization plan" concept to allow Comsat to take advantage of market conditions on short notice, while still providing the Commission with the means to oversee Comsat's financial activities, as required by the Satellite Act. This marked a change in the way the Commission reviewed the financial activities of Comsat. Instead of evaluating its financial transactions individually,

which over the last decade has purchased stock in some fourteen communications companies in various foreign countries (see footnote 5 below).

³ *The Consolidated Capitalization Plan for 1983-1985 of the Communications Satellite Corporation*, 94 F.C. C. 2d 1149, 1150 (1983) emphasis added, modified in part, F.C.C. 83-381 (August 17, 1983) (*1983 Capitalization Order*)

Comsat was authorized to file more long-term capitalization plans, which were generally approved if there was no harmful impact on jurisdictional ratepayers. As a result, the Commission does not currently require Comsat to receive prior authorization for specific acquisitions of entities such as Belcom. The Belcom stock purchase falls within the parameters of the capitalization plan and Comsat's participation in Belcom is not inconsistent with its statutory mission. Consolidated Ruling at ¶ 27, footnotes omitted.

As noted above, subsequent to the issuance of the Consolidated Ruling, certain of the Petitioners filed a request seeking the issuance of a supplemental order correcting a number of errors in the Consolidated Ruling, including issues related the BelCom Stock Purchase Declaratory Relief Proceeding.

Comsat, by its attorneys, responded to Petitioners' filing, submitting a pleading entitled "Opposition to Request for Issuance of Corrected Memorandum Opinion and Order" ("Comsat Reply"). In its Reply, Comsat stated as follows:

"Similarly, the Committee's assertion that the Commission incorrectly described COMSAT's position (!) with respect to purchasing a majority interest in BelCom (Request at 10-12) is merely an attempt to reargue its claim that COMSAT's purchase of such an interest was unlawful. In Fact, COMSAT has never asserted that any capitalization plan authorization gave it specific authority to purchase a majority interest in Belcom, and the Commission did not make such a finding-- nor is such a finding necessary in order to conclude that COMSAT's conduct in this regard was fully consistent with the Satellite Act." Comsat Reply at 3-4, emphasis in the original.

Thus, Comsat fully admitted that no capitalization plan submitted by it ever gave Comsat "specific authority to purchase a majority interest in Belcom..." We are therefore confronted with a double admission of a series of direct violations of the Satellite Act by Comsat.

In its earlier submission in the Declaratory Relief proceeding, Comsat admitted that it had never applied for and secured the specific advance approval of the Commission to authorize its series of stock purchases of BelCom. Rather, as noted, it took the position that its participation in the Capitalization Order process included (somewhere) the proper authorization for its stock purchases. However, in the Comsat Reply, a specific admission against interest is included as Comsat admits without

qualification that no specific authorization was sought or received in its capitalization plans to support the Comsat purchases of BelCom stock.

Comsat's Statutory Violations

In adopting the Satellite Act, the Congress set forth a specific procedure for assuring the Comsat would coordinate any future expansion undertaken through the acquisition of other companies by seeking the prior approval of the Commission to all such stock purchases. The Congress included Section 221 (c)(8) to address this matter.

The said provision specifically requires that Comsat secure prior findings (and approvals) of the Commission that any proposed purchase of equity in another company meets two specific tests: i.e. (1) that the purchases are consistent with and in furtherance of the objectives of the Satellite Act, and (2) that the purchases are consistent with the basic standard defined in the Communications Act of 1934, as amended (47 USC § 151 et seq), i.e, can be found to meet the public interest, convenience and necessity.

Clearly, it was the intent of Congress that any expansion transactions to be undertaken by Comsat through the acquisition of equity interests in other companies met the standards specifically defined in the legislation. By establishing this formal process for approval, Congress mandated that all such acquisitions were carefully monitored and approved in advance by the Commission.

Petitioners have previously established that, with regard to the series of BelCom stock purchases, Comsat repeatedly and knowingly failed to seek and receive the mandated prior approvals of the Commission. These statutory violations were deliberate and intentional.⁴ It is presumed the same statutory violations were also involved with

⁴ Comsat counsel were placed on notice as early as September 1995 of the fact that Petitioners were seeking intervention by the Commission with respect to the repeated failures of Comsat to seek and obtain the Commission's prior approval of their BelCom stock purchases. Notwithstanding said notice, Comsat refused to alter its practices while subsequently making as many as eleven separate purchases of BelCom stock, and in some cases, Comsat attorneys reportedly confirmed to counsel representing sellers of BelCom stock that Comsat was making the subject purchases without obtaining the Commission's prior grant of authority.

Comsat's numerous stock acquisitions of some fourteen other international communications businesses⁵ and the purchases of a number of domestic communications and non-communications businesses made with increasing frequency over the last eight years.⁶

And in the Comsat Reply, we are presented with an admission that Comsat failed to secure specific (read any) ancillary authority from the Commission through the Capitalization Order review process for such purchases. As a consequence, Comsat has admitted direct violations of the Satellite Act.

Clearly, this is a most serious matter. We are confronted with direct evidence of Comsat's cavalier, impudent pattern of illegal behavior and repeated, deliberate failures to comply with specific Congressional directives as codified in the Satellite Act. Furthermore, Comsat is guilty of a pattern of activities, which over a number of years, involved an unauthorized buying binge of highly questionable stock acquisitions, some of which were clearly not in the public interest.

As established on the record, there was clearly no Commission authority granted for Comsat's purchases of BelCom stock. This failure of Comsat to comply with the strict provisions of the Satellite Act make these purchases illegal and invalid. This raises numerous serious legal issues given the current state of BelCom, which Petitioners together with others, can properly address, following Comsat's relinquishment of control.⁷

⁵ Comsat reports that its international division currently has acquired and operates eleven communications companies in countries around the world, including the following subsidiaries: COMSAT Argentina; COMSAT Brazil; COMSAT Colombia; COMSAT Guatemala; COMSAT Mexico; COMSAT Peru; COMSAT Venezuela; COMSAT Turkey; COMSAT Max (India); and COMSAT TTS (PRC), in addition to its claimed interest in BelCom. Formerly, Comsat held stock interests in a cellular company in Russia, and telecommunications companies in South America and India.

⁶ These stock purchases included controlling interests in *National Basketball League* and *National Hockey League* franchises in Denver, a Hollywood motion picture company, a telecommunications equipment manufacturing company, a television production company, and three hotel movie distribution companies.

⁷ Since 1995, Comsat, under color of law, has proceeded to seize control of BelCom. Over this period, BelCom has suffered severe reverses in its business (losing revenues, clients, contracts, employees and business partners), leaving the company in a moribund state. Comsat has sought to sell BelCom, but its sorry state and the serious pending issues related to the illegality of Comsat's series of stock purchases are

Comsat's admission of a series of actions which constitute violations of the Satellite Act extending over a period of years, and the related deliberate illegal actions of Comsat management and directors are matters that are clearly sanctionable by the Commission. Indeed, a review of the facts known to Petitioners reveals that Comsat has gone to great lengths since fall 1995 in an effort to stave off inquiry into this serious illegal activity.⁸

Comsat purposely failed to seek regulatory approval of third party stock purchases apparently to avoid mandated scrutiny by the Commission. Once Petitioners discovered this illegal activity, they brought it to the attention of the Commission and others. Comsat then launched an all-out effort to attack and disparage Petitioners, using teams of lawyers to increase pressure on the individual Petitioners. The objective of this concerted campaign was obviously undertaken to deflect attention from Comsat's illegal activities. Petitioners had discovered Comsat's illegality, and the corporation, directed by management, sought to use its considerable resources to disguise, dissemble, misrepresent and misinterpret the true facts to the Commission, while waging a considerable rear guard action against Petitioners. Indeed, if Comsat was without guilt, one must logically ask why it committed such personnel and money to its fight against Petitioners during a time when its operations (and income) were in a state of free fall, it lacked earnings to pay dividends and it was selling major assets (including its office building) to raise needed cash. Comsat has paid truly scarce capital in its five year effort to fend off and even silence Petitioners. Comsat's actions, which constitute a bad faith effort to cover its illegal behavior, must properly subject the corporation and its management to penalties and sanctions.

Additionally, with respect to sanctions, pursuant to applicable provisions of the Satellite Act, such illegal activities of Comsat and its management must be properly

conditions, which have made the company unsalable. Comsat continues to claim full ownership of BelCom.

⁸ Throughout the last five years Comsat has threatened and actually filed legal action against the Petitioners, spending in excess of \$2 million dollars, employing a dozen law firms in as many states to carry out its concerted campaign of intimidation and economic coercion. Additionally, Comsat moved to seize BelCom illegally.

referred to the Attorney General for investigation and legal action before the US District Court (see 47 USC § 746). These illegal activities of the corporation and its officers and directors should also properly be made the subject of investigation by the House and Senate Commerce Committees and Communications Subcommittees. The said Committees have statutory oversight authority with respect to the continuing operations of Comsat.

Pattern of Statutory Violations

What we are presented with is evidence of Comsat's flagrant and continued disregard of the very statutory authority that gave it life. Comsat, as a government sponsored corporation, is a unique company- a creation of the Congress. Consequently, Comsat must be expected to conduct its affairs in a manner, which is found to comport with this unusual birthright, and above all, to operate in full compliance with the Satellite Act.

Unfortunately, over the last several years, Comsat has become a very troubled company, as witnessed by a 1997 shareholder revolt, which sought the ouster of the Board of Directors and management for what was described as outright neglect, incompetence and mismanagement (one shareholder stating publicly that the Comsat president was not qualified to operate a New York Stock Exchange company⁹).

Comsat has lost its direction over the last decade, finding its way into a myriad of businesses, including the distribution of adult movies in 1 million hotel rooms across the US¹⁰. Over this time, it has lost hundreds of millions of dollars in uncontrolled corporate

⁹ It is noted that the full biographical background of the Comsat president is unknown to shareholders- or seemingly anyone else outside the company. Comsat maintains that this biography is "confidential." No reason has been given supporting this very unusual and unacceptable corporate policy. Comsat is a company founded by Congress. It is a public company with some 39,000 shareholders and subject to the reporting requirements of the Commission and the Securities and Exchange Commission. This notwithstanding, Comsat continues to observe a policy of corporate obfuscation, denying the public access to biographical information concerning the company's chief executive officer, who, as reported by the Washington Post on June 26, received total compensation of \$2,366,904 during 1999.

¹⁰ Certain of the Petitioners brought the matter of Comsat's participation in the distribution of adult movies to the Commission on December 29, 1995, through the submission of a Rule Making Request. This Request was subsequently updated and supplemented. The Petition remains before the Commission. No

expansion¹¹, while its core businesses (INTELSAT and Inmarsat transponder sales) have undergone an advanced decline, confronted with growing competition from international and domestic satellite companies and terrestrial carriers. It is no wonder the company's shareholders sought to make changes.¹²

In addition to this unfortunate record of corporate nonperformance, neglect and incompetence, it is now found that Comsat has continually and purposely failed to comply with various provisions of the Satellite Act, as it has proceeded with what have proved to be ill-conceived expansion plans, costing the corporation hundreds of millions of dollars in losses. It was in this state that Comsat in September 1998 entered into an agreement with Lockheed Martin Corporation, under which it has agreed to acquire all of the outstanding stock of Comsat for a combination of cash and stock valued at approximately \$2.5 billion.

In passing the Satellite Act, the Congress specifically required the Commission to review all Comsat stock acquisitions prior to their consummation to determine whether, on review, the agency could find the proposed transactions to meet the two necessary statutory tests. This statutory requirement and standard as applied to the BelCom stock purchases has never been amended or limited in any way. It appears that Comsat for at least a decade has routinely, repeatedly and deliberately disregarded this key statutory requirement.

action has been taken to date. Comsat in June 1997 spun off the stock of all of its entertainment businesses (including the movie distribution firms) to its shareholders. This action basically gave away businesses valued at about \$750 million to its shareholders as a stock dividend. Petitioners believe that this action was undertaken by a Comsat Board of Directors fearful that the pending FCC petitions or some other public action would be taken to hold them up to severe criticism for using Comsat's limited resources (and the proceeds from its Congressionally sponsored INTELSAT monopoly) to operate a business to distribute movies, which have been classified as pornography by the *New York Times* and *Forbes*. Further, this activity certainly directly violated the public interest standard of the Satellite Act.

¹¹ Comsat's operation of one of these businesses, Comsat RSI, a telecommunications equipment manufacturing company, caused Comsat to write down losses of approximately \$100 million over its years of operations.

¹² Comsat responded to the shareholder proxy action by bringing a suit in Federal District Court in Virginia against the complaining shareholders and Comsat's past president. The case was based on a theory that Comsat could sue the shareholders and president for conspiring to violate the Satellite Act. This private right of action does not exist under the Satellite Act. However, the shareholders settled the case, receiving a payment from Comsat of \$850,000 and receiving two director seats on the 15 person Board.

The referenced Congressional policy, which provides for an administrative check on Comsat expansion plans, is quite wise. Comsat's consistent and deliberate failures to comply with this statutory provision constitute direct violations of law.

Certainly, had the Commission been called upon by Comsat to make specific, detailed and public findings, concerning its various third party stock acquisition proposals, it is reasonable to expect that some, if not all, of the approvals would not have been forthcoming. Any such rejections would have saved Comsat from unwise expansion transactions, which ultimately cost the company hundreds of millions of dollars of losses, weakened its position in the marketplace, and threatened its continued financial viability. Further, these failed expansion transactions also negatively impacted Comsat's ability to carry out its statutory responsibilities as US signatory to INTELSAT and Inmarsat treaty organizations.

The Commission, for example, if presented with the opportunity, could have rejected Comsat's expansion into various entertainment businesses, including Hollywood film production and the ownership of professional basketball and hockey teams. Indeed, Petitioners are convinced, for example, that the Commission would never have assented if it had been asked to approve Comsat's acquisition of a series of entertainment businesses, which would eventually make Comsat the country's largest purveyor of adult movies to hotels throughout the United States. Not only did such activities cause millions of dollars of losses to the corporation, but they also resulted in Comsat violating its public interest responsibilities, as year in year out, twenty four hours per day, every day, it distributed morally reprehensible films on open channels to audiences of all ages, including minors¹³. It should also be noted that the operation of these particular businesses also impacted Comsat's status as US signatory representative, since the distribution of these films directly violated the national laws

¹³ Petitioner's rule making request focuses on the fact that the systems operated by Comsat and others failed to make any provision restricting access to adult films by minors. Also, the filing notes that such systems fail to report the title of films on hotel bills preventing parental supervision of children left unattended in hotel rooms.

and ethical standards of many foreign countries with which Comsat maintained commercial relations on behalf of the United States.

Further, we expect that, if given the opportunity, the Commission would have vetoed Comsat's plans to purchase a series of foreign based communications businesses, due to the inherent conflicts which can arise where Comsat is both a holder of foreign communications licenses, and the U.S. Signatory to INTELSAT and Inmarsat.¹⁴ Comsat's private interest in protecting its foreign license or franchise and causing it to curry favor with a foreign communications ministry can conflict with the interests of the United States where, as signatory, Comsat is called upon to take a position contrary to the said ministry. Simply stated, the question of third party stock acquisition approval aside, Comsat should never have been permitted to purchase communications interests in foreign countries, so long as it continued as US signatory representative.

The Status of BelCom

The immediate grant of the requested order finding Comsat's purported purchases of BelCom stock in violation of the Satellite Act, will also have the effect of rendering these stock purchases illegal and invalid. This in turn will permit Petitioners to proceed with efforts to restore BelCom, which is, at present, being allowed to disintegrate on a month by month basis¹⁵.

¹⁴ We note, for example, that Comsat in 1998 became embroiled in a serious dispute with the Ministry of Communications of Argentina. Comsat faced the strict limitation of its business in Argentina and contested this matter. Comsat's actions as a holder of an Argentine communications license must be private in nature, and such concerns and objectives conflicted with, and compromised, its responsibilities as US signatory representative to the INTELSAT and Inmarsat treaty organizations. As the holder of licenses in Argentina and some twelve other countries, Comsat's private interests, in seeking to expand its businesses in the said countries, can place it at cross purposes with the policy objectives of the United States as directed by the State Department.

¹⁵ It is noted that BelCom holds a series of vital communications licenses granted by the Ministry of Communications of the Russian Federation. These licenses, secured by the founding management of BelCom (prior to the participation of Comsat), were obtained based on representations that BelCom would actively work to build out the communications infrastructure required to utilize the permits. BelCom, under Comsat's management, has failed to invest capital necessary to build the required telecommunications plant and establish the business base to use these vital licenses. This raises issues of an intergovernmental nature. It therefore is a matter of concern that steps be taken on an expedited basis to remove Comsat's illegal claims to stock ownership to allow the necessary steps to be taken to reorganize BelCom, permitting it to proceed along its original course, which had placed it in a leadership position among the new pioneering companies bringing needed communications technologies to Russia.

Recent information communicated to Petitioners has confirmed that BelCom remains in existence practically in name only, the company's physical plant, operating staff and customer base having been reduced to a bare minimum through years of neglect by Comsat. Over the last five years, Comsat has failed to supply the needed capitalization, corporate support and direction to enable BelCom to build out infrastructure and develop a growing client base.

A termination of Comsat's interest in BelCom will therefore permit necessary steps to be taken to restore this communications company.

Conclusion

The Congress was quite correct in establishing the review process for Comsat's third party stock acquisitions. Comsat has now admitted that it failed under any set of circumstances to apply for and secure the prior approval of the Commission to make any of its purchases of BelCom stock.

As outlined in this proceeding, Comsat, over a period of years, has been guilty of a pattern of behavior involving a series of deliberate and repeated actions and activities in direct violation of the Satellite Act. The corporation has further sought brazenly to cover these illegal acts by offering various explanations to the Commission. However, now, when taking together Comsat's Reply and its other statements in the Declaratory Relief proceeding, it becomes clear that with regard to its purchases of BelCom stock, it never complied with (or even attempted to comply with) the specific prior approval requirements of the Satellite Act. Through its actions and nonactions, Comsat has sought to avoid Commission and Congressional scrutiny¹⁶ with respect to its past

¹⁶ The Satellite Act requires that the Comsat Board include three directors appointed by the President with the advice and consent of the Senate. Since 1996 with the resignation of the late Senator Barry Goldwater as one of the Presidentially appointed directors, Comsat has repeatedly and deliberately failed to offer director candidates for nomination by the President. By not presenting any new nominees over the last four years, Comsat has also intentionally avoided annual reviews of its operations by the Senate Communications Subcommittee, which have been included with the committee's regular review of Board candidates.

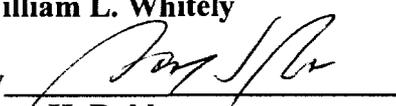
behavior. Given the facts, which have now been placed on the record, Comsat and its management must be held accountable and sanctioned for its illegal behavior.

Consequently, it is requested that the Commission enter a directed ruling finding Comsat's actions and deliberate pattern of behavior with respect to its purported purchases of BelCom stock to be in violation of the Satellite Act. It is also respectfully requested that appropriate sanctions be entered against the corporation and its management for their past actions.

Separately, as noted, this matter will be referred to the Department of Justice and the concerned Congressional Committees.

Respectfully submitted,

**Litigation Recovery Trust,
William J. Hallenbeck and
William L. Whitely**

by 

**Scott H. Robb
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Their Attorney**

June 28, 2000

CERTIFICATE OF SERVICE

I, Denise Harris, hereby certify that I have this 29th day of June, 2000 forwarded the foregoing RESPONSE TO REPLY OF COMSAT CORPORATION AND PETITION FOR DIRECTED RULING BASED ON ADMISSION AGAINST INTEREST BY COMSAT CORPORATION via Federal Express or US Mail, postage prepaid to the following:

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