

OC 16/11/96

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

RECEIVED

In the Matter of	)	JUL 26 2000
)	
COMSAT CORPORATION	)	FCC MAIL ROOM
Maritime Telecommunications Network,	)	1-SAT-ISP-96
Inc., and William L. Whitely Petitions)	
for Reconsideration)	
PanAmSat Corporation Application	)	99-SAT-ISP-96
for Review)	
Comsat Corporation Notification of	)	31-SAT-ISP-97
Corporate Reorganization)	
Comsat Corporation Notification of	)	196-SAT-ISP-97
Corporate Reorganization)	
)	
WILLIAM L. WHITELEY)	
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 Comsat Payment of	)	64-SAT-DR-97
Dividends from Retained Earnings, as amended)	
Emergency Petition to Enjoin Comsat	)	65-SAT-DR-97
from Using Legal Process, as amended)	
)	
BELCOM MINORITY SHAREHOLDERS)	
AND CLAIMANTS COMMITTEE)	
Petition for Investigation and Issuance of a)	
Declaratory Ruling	)	73-SAT-DR-97
)	
PANAMSAT CORPORATION)	
Petition to Reopen Changes in the Corporate	)	CC Docket No. <u>80-634</u>
Structure and Operations of the)	
Communications Satellite Corporation)	

PETITIONERS' RESPONSE TO OPPOSITION OF COMSAT CORPORATION
TO PETITION FOR DIRECTED RULING BASED ON
ADMISSION AGAINST INTEREST BY COMSAT CORPORATION

Litigation Recovery Trust, William J. Hallenbeck and William L. Whitely
("Petitioners"), by Trustee William L. Whitely, file this Response to Opposition of

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List A B C D E

Comsat Corporation To Petition For Directed Ruling Based On Admission Against Interest By Comsat Corporation (“Response”). Comsat Corporation (“Comsat”), having submitted a perfunctory pleading styled “Opposition of Comsat Corporation” (“Opposition”), has misrepresented prior Commission precedent and failed in any substantive way to address Petitioner’s earlier filing.

A. Introduction

As noted below, Comsat in its Opposition confirms its admission against interest, thereby supporting the pending Petition for Directed Ruling against Comsat as proposed by Petitioners. Comsat’s actions raise serious ancillary issues of lack of candor and misrepresentation in an effort to mislead the Commission, designed to conceal a multi-year pattern of flagrant illegal behavior, involving a continuing series of serious statutory violations. Comsat has broken the law repeatedly, and attempted to mislead the Commission.

Additionally, and unfortunately, Comsat has devoted the balance of its pleading to an unprincipled ad hominem attack against Petitioner’s counsel, Scott H. Robb, based on allegations its management knows to be false and/or misleading or incomplete¹. Echoing Joseph Welch in the Army-McCarthy hearings, we would ask the Comsat attorneys, "Have you no sense of decency, gentlemen?"

Over the past five years, we Petitioners have all been victimized by continuous attacks by the small group of senior managers who determine policy at Comsat. Among us, however, Mr. Robb has endured the brunt of Comsat’s assaults.² This

¹ As Comsat counsel have been informed, Petitioners are motioning to revoke the referenced Delaware decision which is unconstitutional. Further, as Comsat counsel also have been informed, the referenced Massachusetts District Court decision, which directly violated license transfer prohibitions set forth in the Communications Act of 1934, as amended (47 USC § 308) (“Communications Act “ 47 USC § 151 et seq), was corrected in the court’s final order. Finally, Comsat counsel has been informed that upon the conclusion of Comsat related proceedings, a motion will be made to revoke and vacate the referenced court ruling as violative of 47 USC § 308.

² Between 1993 and 1995, Mr. Robb served as a founder and acting chief executive and general counsel (without compensation) for BelCom, Inc. (“BelCom”), a company funded in part by Comsat. Comsat seized control of the company in 1995, and when Mr. Robb sought payment for three years of services,

conduct, which can only be termed gross abuse, reflects a self-interested policy of this small group Comsat's senior managers to regularly engage in misuse of legal process, incorporating invective, personal attacks and worse as an artifice to coerce and intimidate those who would challenge their authority. Comsat management, seeking to conceal their own malfeasance, misfeasance and ineptitude, have employed a campaign of abuse of power, fraud and misrepresentation, intimidation and economic coercion³. As we all know, there is a line governing acceptable and legal behavior. The Comsat senior managers long ago crossed that line.

It is noted that the Opposition also represents what will undoubtedly be one of the last pleadings offered by this Comsat senior management team, as control of the corporation is in the process of shifting to Lockheed Martin Corporation ("Lockheed"). Thus will end this sorry history of corporate abuse and excess. Petitioners support this transfer of control at the earliest possible date to Lockheed, a company, which we note from published reports takes prides in abiding by established, formal ethical standards.⁴

Comsat filed a baseless law suit in Delaware, alleging him to be a "disloyal director." For the last five years, Comsat has spent some three million dollars and employed twelve law firms in as many states to attack Mr. Robb, the latest having occurred with the filing of the Opposition. It has also been learned that it used its status as a government sponsored enterprise to influence decisions in its behalf, and has secured an unconstitutional gag order against Petitioners. The rulings remain the subject of motions to dismiss and reconsider. To this point, Comsat has not paid a penny for three years- and thousands of hours- of consulting services and hundreds of thousands of dollars of other services provided by Mr. Robb and the Petitioners. Comsat also seized stock owned by Mr. Robb and the undersigned without payment of any consideration. Such behavior, which is clearly part of a concerted effort to defraud individuals and misappropriate their goods and services, has become the basis for Petitioners' dedication to achieving justice, including a return of BelCom, payment of appropriate tort damages and the sanctioning of those who have injured them. Finally, Petitioners seek regulatory safeguards to assure that such illegal conduct by officers of government sponsored enterprises is not repeated.

³ In addition to the dispute with Petitioners, over the last several years, this Comsat management has brought baseless litigation against the company's business partners, consultants, suppliers, ex-executives (including Bruce Crockett, the company's immediate past president) and dissident shareholders (some of whom now sit on the company's Board), as part of a strategy to use its economic and governmental powers against such individuals and entities. This conduct constitutes a denial of Comsat's public trust and violation of law.

⁴ See *Lockheed Today* publication, "Something to Go By," Dr. Brian D. Dailey, Vice President, Lockheed Martin Corporation Washington Operations, (May, 1998)
<http://www.lmco.com/files3/lmtoday/9805/values.html>
<http://www.lockheedmartin.com/files3/lmtoday/9805/values.html>

Petitioners again respectfully request that the Commission find Comsat's admitted actions to constitute direct violations of Section 721 (c) (8) of the Communications Satellite Act of 1962, as amended (47 USC § 721 (c)(8)) ("Satellite Act"). Such a statutory violations involving the failure to apply for and secure prior approval for stock acquisitions as specifically required by the Satellite Act, void Comsat's prior purchases of stock of BelCom, Inc. ("BelCom").⁵ Appropriate action by the Commission is also requested with respect to all additional Comsat purchases of stock interests in other companies in contravention to Section 721(c)(8). Finally, Petitioners request the ordering of appropriate sanctions, fines and forfeitures against Comsat, its senior officers and directors for the pattern of illegal behavior which is the subject of this proceeding.

B. Comsat Opposition

It is Petitioners' position that Comsat's purchases of stock in BelCom⁶, which were all undertaken without seeking the prior approval of the Commission as required pursuant to 47 USC § 721(c)(8), are illegal and void. Questions regarding these unauthorized BelCom stock purchases, first raised by the Petitioners through a Congressional Research Office inquiry with Commission staff in late 1995, remain under review by the Commission in a Declaratory Relief proceeding commenced on its own motion in 1996 (FCC 118-SAT-DR-96 ("DR-96 Proceeding")) being reconsidered as part of this omnibus proceeding.

In its initial submission in the DR-96 Proceeding ("Initial Reply"), Comsat admitted that it had never submitted individual applications to secure the specific advance approval of the Commission to authorize its series of purchases of BelCom stock. However, in this initial filing, the company referenced the Capitalization Plan⁷ process by which the Commission monitors certain financial activities of Comsat.

⁵ The voiding of Comsat's purchases will return ownership of BelCom to certain of the Petitioners, who are founding shareholders.

⁶ Comsat made approximately 12 such unauthorized purchases between May 1993 and the present.

The *Capitalization Order* was originally adopted in response to a 1983 Comsat request to alter the process under which the Commission approved the corporation's financing plans. To that time, the company's financings had been reviewed on an application-by-application basis. Comsat took the position that a general capitalization plan, subject to the Commission's prior approval under Section 721(c)(8), represented a more efficient method for supervising its financial operations. The Commission summarized Comsat's proposal as follows:

“Comsat argues that while an *ad hoc* approach to the treatment of its [Section 721(c)(8)] requests to issue capital stock and to obtain external financing generally has been satisfactory in the past, such an approach will become increasingly burdensome for both Comsat and the Commission in the future.” 94 FCC 2d at 1150, emphasis added.

The Commission adopted the proposed capitalization as authored by Comsat plan with relation to the company's future financing activities (i.e. the sale of Comsat stock and the borrowing of funds), finding as follows:

Comsat's Capitalization Plan provides us with a comprehensive overview of the parent company and its subsidiaries...Subject to the conditions we have set forth, the Plan should enable us to better monitor Comsat's financing activities and the effects of these activities upon the rates of its regulated services, in furtherance of the public interest.. 94 FCC 2d at 1159-1160, emphasis added.

The *Capitalization Order* dealt specifically with the overall financing of Comsat. As such, this ruling addressed strictly the capital raising aspects of Section 721(c)(8) - the sale of stock and borrowing of funds, including issuance of debt securities by the corporation. This ruling did not address in any way the third element of Section 721(c)(8), i.e. the assumption “of any obligation in respect of the securities of any other person...” ,i.e. the purchase of stock in other companies. This specific limitation on Comsat's purchase of equity shares in other companies is reflected in the Commission's summary of Comsat's request in the *Capitalization Order*; i.e. to replace the “*ad hoc* approach to the treatment of its Section 201(c)(8) requests *to issue capital stock and to obtain external financing.*” 94 FCC 2d at 1150, emphasis added.

In its initial filing in the DR-96 Proceeding as submitted by its corporate staff attorneys, Comsat, having admitted that it did not file for authority to purchase

⁷ *Communications Satellite Corporation*, 94 FCC 2d 1149 (1983), modified in part, FCC 83-381

BelCom shares, offered a defense for this failure to secure the prior approval for its series of actual and potential purchases of BelCom stock with citation to the *Capitalization Order* as authority for the overall financing of the corporation. Comsat clearly attempted to provide the impression that it had sought prior authorization from the Commission by referencing the BelCom stock acquisitions in its annual capitalization plans. This filing constituted a carefully orchestrated attempt to mislead the Commission, an attempt which, as noted below, was successful in its purpose. Comsat knew fully the parameters of the Capitalization Order. It conceived of the order, authored the request and participated fully in the Commission's consideration of the item and ultimate adoption of the Order.

As noted, the *Capitalization Order*, by its terms, does not now provide (and never has provided) authority for Comsat to assume "any obligation in respect of the securities of any other person..." Comsat had full knowledge of these facts as the company petitioner and author of the *Capitalization Order*. The Order had and has nothing to do with Comsat's purchases of stock in other companies. For Comsat feign confusion over this matter is disingenuous and constitutes intentional misrepresentation.

In point of fact, Comsat, having no valid defense to its failure to secure prior authorization of the Commission for the actual and potential stock purchases of BelCom, sought to obfuscate matters by referencing the *Capitalization Order* process, and in so doing misled the Commission.

Based on Comsat's citation of the Capitalization Order process as authority for its purchases of BelCom shares, the Commission initially ruled in Comsat's favor in its 1998 consolidated ruling order (*Comsat Corporation*, 13 FCC Rcd 2714 (1998), herein "Consolidated Ruling") as follows:

Petitioners claim that Comsat's purchase of stock in Belcom required prior Commission approval and that Comsat violated [Section 721(c)(8)] of the Satellite Act in failing to obtain this approval. Comsat asserts that it was not required to secure prior Commission approval for this particular financial transaction, since its "capitalization plan" authorization had already given it the authority necessary to purchase shares of Belcom stock, including a

(released Aug. 17, 1983) (cited herein as *Capitalization Order*.)

majority interest. Petitioners contend that the capitalization plan order dealt only with the overall financing of Comsat and did not apply to transactions involving the purchase of stock.

We find that Comsat did not violate [Section 721(c)(8)] of the Communications Satellite Act by purchasing stock in Belcom. No prior Commission approval was required because the acquisition of Belcom was within the parameters of its capitalization plan. Consolidated Ruling at paras. 25, 26, emphasis added

Thus, the Commission clearly accepted Comsat's misrepresentation that its capitalization plan filing gave it "authority necessary to purchase shares of BelCom stock, including a majority interest." This conclusion was based on the artful non responsive response that Comsat had submitted to the Commission. Comsat had referenced the capitalization plan, and by reference sought to connect its budget plans directly to the BelCom purchase. In actuality, there was clearly no connection.⁸ This non responsive response constituted astounding lack of candor on the part of this government sponsored enterprise and outright misrepresentation.⁹

Consequently, Comsat Reply was submitted by the company's outside counsel apparently in an effort to correct the misinformation (misrepresentation) and/or correct the Commission's misinterpretation with respect to the information contained in the Initial Reply. The Comsat attorneys admitted without qualification that no specific authorization was ever sought or received by the corporation to support its purchases of BelCom stock in the context of the Capitalization Order process. Seemingly, Comsat management (or the outside counsel) determined that it had to include this particular statement to avoid the Commission relying on an

⁸ The initial BelCom stock purchase was proposed to Comsat by PaineWebber, Inc (representing the BelCom founders) in September 1992 and the initial stock purchase took place in May 1993. Successive purchases followed in 1993, 1994, 1995 and 1996. None of these purchases had long lead times, with some taking place in a matter of weeks or days. Given this timing and in light of the year in advance scheduling of Capitalization Plans, multiple references to the BelCom stock purchases could not have been, and as Comsat has now confirmed, were not included in its annual budget plans as submitted to the Commission.

⁹ Such a pattern of behavior on the part of Comsat's attorneys is most shocking. This government sponsored company has been mandated by Congress to operate in the public interest. Accordingly, its officers and directors must comply with, and be held accountable to, the highest standards. The actions of Comsat's attorneys as outlined constitute a flagrant attempt to mislead the Commission and must be suitably sanctioned. The Commission, which rightfully takes a very dim view where it discovers broadcast and other licensees seeking to be less than completely truthful in providing information for review, must take severe action here where the wrongful conduct comes at the hands of Comsat executives, who have been charged with a public trust.

interpretation of Comsat's past actions which was simply wrong. This clearly was an admission against interest by Comsat.

In its Opposition filed last week, Comsat has attempted, through tortured and erroneous logic, to take the position that it made "no admission against interest" in its earlier pleading. To arrive at this position, Comsat (this time acting through a staff attorney) restates its position that it never sought specific authority in any capitalization plan to purchase a majority interest in BelCom. However, it then argues that such a failure is permissible. In Comsat's view, it never had to seek such authority. In support of this position, Comsat cites the Consolidated Ruling by noting that the Commission initially stated that it "does not currently require Comsat to receive prior authorization for specific entities such as Belcom" (Id at 2726). However, this statement by the Commission was made on the basis of Comsat's artful representation (read misrepresentation) that some how its Capitalization Plan filings had referenced the BelCom stock purchases. The Commission has not ruled, as it cannot, that Comsat has been granted a general waiver of the pre-authorization requirements defined in Section 721(c)(8). The Commission never issued such a ruling. Such a general policy change would require the amendment of the Satellite Act. Furthermore, in light of subsequent events, noted below, Comsat's argument, based on the Consolidated Ruling, is misplaced and erroneous.

As the Comsat legal department must know, the Commission¹⁰, acting in response to a filing by Petitioners, in March 1998, represented to the US Court of Appeals for the Second Circuit that it had placed the Consolidated Ruling under reconsideration immediately after its issuance¹¹. Based on this representation by the Commission, the

¹⁰ For Comsat to have no knowledge of the current status of a proceeding directly impacting the company and its assets is most troubling. It also raises the question of whether Comsat has given Lockheed proper and full notice of this proceeding in the context of the pending merger transaction. Petitioners request the Commission staff to make an immediate inquiry concerning this matter of both Lockheed and Comsat. A failure by Comsat to disclose the full details of this expansive proceeding would certainly give rise to issues of affirmative failure to disclose and misrepresentation. The issue of undisclosed liabilities must be addressed by the merger parties. Finally, the FCC must address the issue of candor and misrepresentation with respect to the transfer of control applications pending before the Commission. If the transfer applications are based on incomplete (or misleading) exhibits, the FCC must seek complete information and consider appropriate character issues related to any material failures to disclose by Comsat counsel.

¹¹ Judging by Comsat's cavalier approach – bordering on contemptuous- to regulations and regulatory authority, it is also quite possible that Comsat attorneys simply have chosen to disregard the fact that

Second Circuit Court of Appeals dismissed pending appeals of the Consolidated Ruling, and, as Comsat attorneys should well know, the Consolidated Ruling remains before the Commission and is under active review and reconsideration by the staff at the present time. Comsat cannot rely on the Consolidated Ruling as authority for its statutory violations.

Therefore, Comsat's position, as stated in the Opposition, confirms that it never sought direct approval for its BelCom stock purchase or included BelCom stock purchase authorization requests in its annual capitalization plans. The law is clear. Section 721(c)(8) requires that Comsat seek the Commission's prior approval for all stock acquisitions. The Capitalization Order procedures do not govern such stock acquisition transactions.

When combined with its earlier confirmation that it never sought Commission clearance to acquire BelCom stock, it can be concluded that Comsat has purposely and repeatedly violated 47 USC 721(c)(8) in undertaking a series of stock purchases of BelCom, as well as approximately 20 other acquisitions (witness a 100% ownership of a National Basketball Association franchise, Denver Nuggets, a National Hockey League franchise, the Colorado Avalanche, and a Hollywood film studio, Beacon Films) over a multi-year period.

Further, Comsat's earlier filings in this proceeding give rise to serious issues of affirmative failure to disclose and lack of candor. In instituting the DR-96 Proceeding, the Commission obviously was concerned with allegations that Comsat had failed to file for permission to acquire BelCom stock. The Commission read the clear language of 47 USC § 721(c)(8) and was concerned enough by the facts presented by Petitioners to take the unusual step of launching a special declaratory relief proceeding *sua sponte* to review the matter.

In drafting its Initial Reply, Comsat was forced to admit for the first time publicly that it never applied for specific authority to acquire BelCom stock. By referencing

the DR-96 Proceeding remains open before the Commission. Section 721(c)(8) is in force as written. Comsat counsel cannot change reality.

the Capitalization Process procedure in its response, Comsat implied that it had sought the authority to purchase BelCom stock indirectly, through the annual budget submissions. Of course, there was no statutory or administrative authority to support this position. However, the Commission interpreted the Comsat response to include actions to apply for approval of the series of BelCom stock purchases via the Capitalization Process, and made its original ruling in this proceeding based on this interpretation of Comsat's response.

Comsat next resolved to correct this error on the part of the Commission, which it did via the Comsat Reply filing. When Petitioners recently identified this filing for what it was - an admission against interest- Comsat countered seeking to bootstrap its position by referencing authority supposedly contained in the Commission's February 1998 Consolidated Ruling, which remains under reconsideration. The net Comsat position is as follows:

- Comsat has never applied for authority from the Commission to purchase BelCom stock
- Comsat has never applied for authority to purchase BelCom stock through the Capitalization Process.
- Comsat has over a nearly a five year period purposely misled the Commission by representing the Capitalization Process provided authority for the BelCom stock purchases.
- Comsat has made a series of purchases of BelCom stock over nearly a five year period with full knowledge that no such purchase was authorized by the Commission
- Comsat has repeatedly violated 47 USC 721(c)(8).

Further, Comsat must be found guilty of a continuing lack of candor, and more to the point, false representation as it has attempted to give the impression in its pleadings in this proceeding that the Capitalization Process procedures provided authority for its actions.

C. Comsat's Pattern of Statutory Violations

In adopting Section 721(c)(8), Congress specifically required the Commission to review all Comsat stock acquisitions prior to their consummation to determine whether the proposals could be found to meet two defined statutory tests. This statutory requirement is specific. Congress left no alternative for the corporation to

follow another standard, or, as it has actually chosen to do, ignore the law entirely. By law, Comsat is required to file for and receive Commission approval prior to any stock purchase acquisition.

It appears that Comsat, as directed by its lawyers, over an extended period of time has routinely violated the Section 721 (c)(8) approval process. Further, it has attempted to conceal these violations and has actively misled the Commission in this process. This represents a most serious pattern of statutory violations by the corporation's senior management, and, in particular, its legal counsel.

The Congressional policy reflected in Section 721(c)(8), which included an administrative check on Comsat expansion plans, reflects a well-grounded approach. In adopting the Satellite Act, the Congress set forth a specific procedure for assuring that Comsat would coordinate any future expansion through the acquisition of other companies by applying for the prior approval of the Commission to all such stock purchases. The Congress included the said section to deal with this matter.

The referenced provision specifically requires that Comsat apply for and 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) ("Communications Act"), i.e, can be found to meet the public interest, convenience and necessity.

By intentionally and repeatedly violating 47 USC § 721 (c)(8), Comsat has entered into a series of transactions without the Commission's prior review and approval. These actions have been engaged in by or have received the acquiescence of Comsat's senior officials, including its Board of Directors.¹² These actions constitute outright violations of law.

¹² In a series of detailed communications beginning in early 1996 and continuing into 1998, Petitioners regularly brought information concerning legal violations of Comsat senior management to the attention of the full Comsat Board including, in particular, the Board committee charged with responsibility over legal affairs and the two active Presidentially appointed directors, Peter S. Knight and Ambassador Charles Mannatt. Petitioners received no written acknowledgement or response to

Petitioners fully believe that if the Commission been asked to make a specific, detailed and public findings concerning various Comsat stock purchase proposals, it is reasonable to expect that some, if not all, of the approvals would not have been forthcoming.

A perfect example involves Comsat's successive purchases of a series of entertainment businesses over an extended period, which eventually resulted in Comsat becoming the country's largest distributor of adult movies to hotels in the United States.¹³ Petitioners believe that the Commission would not have assented, if requested to approve an application by Comsat to permit it to acquire these businesses. Most certainly the Commission would have concluded that these businesses violated the public interest standard of the Satellite Act, and raised serious issues with regard to federal anti-pornography laws. Beyond that, Petitioners are of the opinion that the Commission would never have allowed Comsat, as a public trust, to engage in such immoral, rather amoral activities. Comsat, the company formed by Congress to lead the United States and the rest of the world's nations into the majesty of space communications, through the actions of crass, commercial, morally bankrupt corporate managers found its way into the depravity by becoming a purveyor of profanity. This, the Commission would simply not have countenanced.

Moreover, in the case of acquiring each hotel movie distribution company, Comsat intentionally evaded applying for authorization from the Commission. And upon taking control, Comsat management became directly involved with the management

their requests for intervention, save for several oral communications from Lucy Wilson Benson, chairman of the Law Committee , who informed Petitioners that all Board members had been instructed by the Comsat general counsel, one Warren Zeger, to refrain from communicating with Petitioners. In 1998, Comsat management secured an injunction from the Delaware Chancery Court to prevent Petitioner's counsel Scott H. Robb and those associated with him from communicating directly with Comsat board members. The Court directed that all future correspondence be directed to Comsat attorneys. Petitioners regard the injunction as constituting an unconstitutional restraint sought by Comsat in violation of the corporation's unique status as a government sponsored enterprise. Comsat is required to observe all Constitutional proscriptions. (See *Lebrun v. Nat'l. R.R. Passenger Corp.* , 513 U.S. 374 (1995).

¹³ For over a decade, Comsat used its significant resources, including 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 Magazine*. This activity directly violated the public interest standard of the Satellite Act.

of these particular businesses.¹⁴ Such a pattern of activities, cavalierly evading Commission oversight defies comprehension. Comsat senior management including the companies directors held their offices subject to fiduciary responsibilities to the public and the public's representatives including, most particularly, the Congress and the Commission. Comsat management recklessly disregarded, better ignored, these fundamental responsibilities by taking the corporation into the nether world of moral corruption.

Clearly, it was the intent of Congress that all expansion transactions to be undertaken by Comsat through the acquisition of equity interests in other companies would be found to meet the specifically defined standards. By establishing this approval process, Congress mandated that all such acquisitions be carefully monitored and authorized in advance by the Commission. Comsat management at the highest levels repeatedly violated this law.

D. Comsat's Behavior Must Be Sanctioned

It has previously been established that with regard to the series of BelCom stock purchases, Comsat repeatedly failed to seek the prior approval of the Commission. These statutory violations were deliberate and intentional.¹⁵ It appears that the same statutory violation was also involved with Comsat's stock acquisitions of fourteen other international communications businesses and the purchases of a number of other domestic communications and non-communications businesses, made with increasing frequency over recent years.

¹⁴ Senior managers of Comsat, including its chief law officer, one Warren Zeger, served on the board and in other management positions of the hotel movie distribution companies. Also, it is noted that within six months of becoming president –CEO of Comsat, Betty C. Alewine authorized a tripling in size of the company's hotel movie business to nearly 1 million room through the October 1996 acquisition of SpectraVision (the country's largest distributor of in-hotel movies).

¹⁵ Comsat counsel, including its chief legal officer, one Warren Zeger, 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 the BelCom stock purchases. Notwithstanding said notice, Comsat refused to alter its practices, while making as many as eleven separate BelCom stock purchases. In some cases, Comsat attorneys specifically confirmed to counsel representing sellers of BelCom stock that Comsat was making the subject purchases without obtaining the Commission's prior grant of authority. Such actions reflect outright arrogance and contempt. There can be no question here.

Clearly, this is a most serious matter. We are presented with direct evidence of Comsat's pattern over years of illegal behavior and repeated disregard of specific Congressional directives, as codified in the Satellite Act and Communications Act. Comsat has also actively misled the Commission, as it has sought to conceal its past illegal actions. Furthermore, Comsat has been guilty of a pattern of activities, which, over a number of years, led it on an unauthorized buying binge of highly questionable acquisitions, some of which were clearly not in the public interest.

Comsat's series of violations of the Satellite Act and the deliberate and repeated illegal actions of Comsat management and directors are matters which are clearly subject to sanction, and therefore must be properly referred to the Attorney General pursuant to 47 USC § 746.

In addition, these illegal activities of the corporation and its officers and directors should properly be made the subject of investigation by the House and Senate Commerce Committees and Communications Subcommittees. All have statutory oversight and/or regulatory authority over Comsat.

The law is clear. Comsat must seek and obtain the Commission's prior approval for all stock acquisition. Comsat must be charged with full responsibility for operating within the law. Comsat attorneys were placed on notice of this fact. Notwithstanding, they proceeded to disregard the law in violation of the statute, the will of Congress, and the public trust.

E. Pattern of Statutory Violations

Over the last five years, Comsat has used its resources, including its privileges and immunities, to avoid liability for its deliberate violations of federal law. During this period, Petitioners have been among the most outspoken critics of Comsat senior

management.¹⁶ Admittedly, Petitioners' actions began in response to a series of illegal actions taken by Comsat management against them and their company, BelCom (see footnote 2 *supra*). These actions were undertaken by the same Comsat senior managers, whose routine and repeated violations of the Satellite Act are cited above.

Comsat seized BelCom in violation of its corporate charter, bylaws and Delaware law and refused to pay for Petitioners' stock interest and bills for services rendered. Spurning repeated requests for negotiation, arbitration and mediation (including one put forward by a Member of Congress, Comsat employed an army of lawyers to sue Petitioners' counsel as a "Disloyal Director" in Delaware Chancery Court, and entered upon a plan to present false information to achieve a ruling in its favor using, among other things, its privileges as a government sponsored enterprise to orchestrate a favorable ruling. The court's order ultimately obtained is unconstitutional and as such, subject to revocation.¹⁷ In addition, in seeking and securing an injunction against the Petitioners, Comsat itself (as directed by its counsel) was guilty of abridging Petitioners' rights of free speech and petition.¹⁸

The motivation of Comsat's senior management has become all too apparent over this time. Petitioners have, through their own due diligence, found evidence of significant violations of law by Comsat senior management. As referenced in earlier pleadings, Petitioners have discovered the senior management of Comsat engaged in a pattern of activities using its significant resources to victimize small business entities and individuals, bringing baseless lawsuits (including suing Bruce Crockett,

¹⁶ Comsat, the same company that over a decade became the largest distributor of pornography to hotels throughout the country, for the last five years devoted its resources to personally attack, damage, injure and defame the Petitioners. The unprincipled character assassination contained in the Opposition is but another sad example of an arrogant, abusive, unethical and immoral Comsat senior management.

¹⁷ As Comsat well knows, the Court's decision and order violated federal due process rights and the First Amendment right of free speech and petition. Comsat has been informed that Petitioners are currently filing a MOTION TO DISMISS COMPLAINT AND TO VACATE OPINION AND ORDER with the Delaware Chancery Court to annul the decision and expunge the Court's order.

¹⁸ Comsat, as a government sponsored enterprise, is required to observe all proscriptions established under the US Constitution. See *Lebrun v. Nat'l. R.R. Passenger Corp.*, 513 U.S. 374 (1995). Comsat's actions in seeking to enjoin Petitioners from criticizing its management and operations constituted an unconstitutional infringement of Petitioner's fundamental rights.

the company's immediate past president and dissident shareholders, including individuals presently serving on its Board for nonexistent civil violations of the Satellite Act so as to coerce the parties into abandoning an effort to unseat the Comsat board), using domestic and foreign bank accounts to complete unexplained bank transfers totaling millions of dollars, and participating (according in published sources) in surveillance activities (i.e. signal interceptions).

Comsat senior management (as approved by the Board) has misused the corporation's resources to achieve their own personal ends¹⁹. They have sought to avoid liability for malfeasance, misfeasance and utter ineptitude and negligence. In following this course they have victimized many such as Petitioners. However, beyond this, it is now clear that the Commission has also been made subject to this unprincipled, arrogant and illegal mode of conduct.

F. The Hotel Movie Rule Making Proceeding

As has been noted, this same senior management pursued a plan under which Comsat became the nation's largest distributor of adult movies. It continued to follow this course notwithstanding the filing on December 29, 1995 by the undersigned of a Petition for Rule Making with the Commission on the subject of the open channel distribution of adult movies in hotels by companies such as Comsat.²⁰ The Petition was later supplemented in mid-1996. In addition, as reflected in the Attachment hereto, on February 20, 1996, Petitioners brought these activities of Comsat to the attention of the President and all major US broadcasters in a request to add a

¹⁹ In Petitioners' dispute, Comsat management has employed at least 12 law firms and over \$3 million in waging a battle, which began as an illegal effort by Comsat to avoid paying bills for professional services and property. As Petitioners have discovered evidence of Comsat's wrongdoing, involving a continuing pattern of illegal activities and concealment, the company's senior management has used all manner and means available to preserve their positions. Such behavior is an abuse and outright violation of fundamental fiduciary responsibilities.

²⁰ The focus of the Rule Making is to assure the in-hotel cable distribution systems (and satellite delivered systems) employ lock-boxes to prevent viewing of adult programming by minors. The Petition for Proposed Rule Making seeks the adoption of a rule to prohibit the exhibition of sexually explicit films to anyone under the age of 18 via in-room hotel cable TV systems, except where parental permission is obtained. Presently, unattended children can, in most cases, access adult films by simply pressing a button on a remote tuner. It is also usual practice for billing statements not to carry the titles of the movies purchased. This matter remains before the Commission.

proposed Comsat Redress Amendment to the Administration's legislative agenda.

The proposed amendment, included the following preamble:

COMSAT has violated its public trust by, among other things, distributing sexually explicit and graphic motion pictures to over 340,000 suites in luxury and business hotels across the nation. This is the equivalent of operating over 1000 adult movie theaters, 24 hours per day, seven days a week. These films can be accessed by unsupervised children staying in the suites at any time at the push of a button.

Within a number of months following these actions, Comsat management first expanded its hotel movie operations to encompass nearly 1 million hotel rooms (or the equivalent of 3,000 adult movie theatres). Comsat then abruptly reversed itself, possibly the result of the pressure brought by Petitioners. It engineered a plan to terminate its participation in all of its entertainment businesses (including the operation of sports teams and a Hollywood film studio) by disbursing the stock of these businesses to Comsat shareholders. This spin-off was completed in June 1997, ending this sorry chapter in the checkered history of Comsat.

Petitioners believe that their actions aided in bringing about the ultimate termination of Comsat's involvement in these morally reprehensible activities, which reflected the total abandonment of basic family values. For years, the Board of Directors and senior management of Comsat operated these businesses, which 24 hours each day, week in and week out, transmitted into over 1 million hotel rooms across this country sexually explicit and graphic motion pictures that could be seen by anyone (including minors) at the push of a button. The fact that a U.S. government sponsored corporation for years distributed films on an open channel basis with titles such as *Sex Warriors*, *Naked Runner* and *SEX and More SEX (12 episodes)* throughout our nation's hotel rooms to all available viewers, including unattended children, reflects a serious lapse in corporate ethics, a lapse that could never have occurred if Comsat had complied with 47 USC § 721(c) (8) and provided the Commission the opportunity to review the proposed business. There is certainly no likelihood that the Commission would have found Comsat's distribution of pornographic movies (1) to be consistent with the goals and purposes of the Satellite Act and (2) to meet the basic standard

defined in the Communications Act, i.e, consistent with the public interest, convenience and necessity.

This activity of Comsat involved a stark question of right and wrong. Without question, it was wrong for Comsat to be a party to the transmission of sexually explicit and graphic films that could only degrade and do violence to women and endanger children, to say nothing of lowering the personal moral values of male viewers as well.

The fact that Comsat eventually abandoned the adult movie distribution business does not alter the fact that the company's Board and senior management violated their public trust and the public interest over a period of years. This is a morally bankrupt management with no sense of right and wrong.²¹ What they did was wrong and must subject them to sanctions. In essence, Comsat, guided by its senior managers and controlled by its Board of Directors (of so-called prominent citizens, including directors appointed by the President ²²), has for a period of years routinely and repeatedly violated the Satellite Act, as they have in effect legislated for themselves making unauthorized acquisitions of some 20 businesses.

²¹ This same management in the Opposition seeks to explain away its deliberate failure to comply with 47 USC § 721(c) (8) as constituting compliance with the statute. It is also noted that the senior corporate managers and a majority of the Board members who guided Comsat when it operated the hotel movie business at present remain in their positions of power.

²² It is noted that the Congress earlier this year in amending the Satellite Act eliminated the three Comsat board posts for Presidential directors, thus ending this 38 year sinecure. (See The Open-Market Reorganization for the Betterment of International Telecommunications Act ("the ORBIT Act"), 47 U.S.C. 646). Actually, no nominees for the director positions had been offered since 1996. Facts such as Comsat's mismanagement (it has failed to pay dividends from operating revenues since 1996) and potential personal liabilities (the appointees could have faced charges as distributors of pornography) made the directorships far from the political plums they once had been. Also, the failure to submit nominations permitted Comsat to avoid Congressional oversight as occurred at the annual Senate confirmation hearings for appointees. The termination of these directorships also reflects the fact that the participation of visible political appointees (including former legislators, cabinet members, and officials) had not provided expertise over the years sufficient to guide the company so as to avoid a continuing pattern of law violations and disastrous commercial decisions that had put the company into an inevitable downward spiral. It was Comsat's basic commercial ineptitude which left management no other alternative than to seek to sell the company to a well-established, strong and stable corporation. To the good fortune of Comsat's shareholders, Lockheed has decided to serve this role.

It is clear that the company's directors and this senior management team for years violated 47 USC § 721 (c) (8), playing fast and loose with provisions of the Satellite Act, as they acquired the stock of some 20 diverse companies, some of which, as noted above, directly violate the public interest standard of the Satellite Act (not to mention other federal laws). Other corporate acquisitions- such as BelCom and 14 other foreign communications companies- raise serious conflict of interest questions related to Comsat's position as the US signatory representative to INTELSAT and Inmarsat²³.

Given Comsat's unique status as a government sponsored enterprise, the corporate managers in question are expected to function as public trustees, requiring them to be held to a standard higher than other corporate officers and directors. This notwithstanding, the facts clearly show that these individuals have failed to comply with these standards and have followed a course of action flouting the law in making unauthorized acquisitions, which violated the company's public trust and compromised Comsat's ability to carry out its Congressional mandate as the country's signatory representative to the INTELSAT and Inmarsat treaty organizations.

G. Conclusion

Petitioners respectfully request the Commission to undertake the following actions with respect to Comsat, its senior officers and directors:

- 1. Petitioners respectfully request that the Commission find Comsat's admitted repeated failure to apply for and secure the prior approval of the Commission to authorize the purchase of the stock of BelCom and other corporations to constitute direct and continuing violations of Section 721 (c) (8) of the Satellite Act.**
- 2. Pursuant to footnote 4 *supra*, Petitioners request the Commission staff to make an immediate inquiry concerning the disclosure made by Comsat in its merger applications with Lockheed to determine what, if any, information was provided with respect to this proceeding and its present**

²³ Petitioners have noted that Comsat's ownership of foreign communications companies, which hold licenses and require it to maintain good relations with various foreign communications ministries in its own business interest, can present the company with a conflict of interest where US policy requires Comsat to take a position in opposition to one or more of the said communications ministries.

status. Depending on information elicited, such inquiry should address related issues of affirmative failure to disclose and misrepresentation, as well as the related issue of provision for undisclosed liabilities. The Commission should also review the pending transfer control applications to determine possible liability for lack of candor, misrepresentation and affirmative failure to disclose with respect to Comsat's filing of the said applications.

- 3. If it is shown that Lockheed was not provided with notice of the Consolidated Ruling proceeding by Comsat and, as a consequence, has not included standard protections for undisclosed liabilities in the Merger Agreement, the Commission should condition its approval of the transfer of control applications upon the parties agreeing to amend the Merger Agreement so that a proper indemnification provision can be added, with the selling Comsat shareholders accepting full monetary responsibility for any and all undisclosed liabilities (including those resulting from any actions taken by the Commission as a result of this submission) that may be incurred subsequent to closing. The Commission should also direct that a suitable escrow fund and/or surety bond be established by the selling Comsat shareholders to secure performance under the indemnification provision.**
- 4. Petitioners respectfully request that the Commission investigate the past actions of Comsat referenced in this and earlier related pleadings currently pending before it to determine the appropriate disciplinary actions, including sanctions, fines and penalties, to be imposed on Comsat senior management, officers and directors, who are found guilty of participating in actions constituting a pattern of behavior involving repeated violation of the Satellite Act and the Communications Act, as well as intentional violation of the Commission's rules and policies, including fraudulent representation, affirmative failure to disclose, misrepresentation and lack of candor.**
- 5. It is respectfully requested that this investigation be carried out expeditiously and that such proceeding not delay the approval of Lockheed's acquisition of Comsat.**
- 6. Petitioners further request that the Commission order as a provisional remedy that all consideration (including the distribution of Lockheed stock²⁴) to be paid at or following closing of the Comsat-Lockheed merger to any member of Comsat senior management, including, in particular, its president-CEO and vice president, general counsel, and its present directors and those persons serving as directors between 1993 and 2000, be placed in escrow with the Commission, pending completion of a full investigation into statutory and rule violations by Comsat and the**

²⁴ It is noted that the final payment of consideration to Comsat shareholders under the Merger Agreement with Lockheed calls for the exchange of Comsat shares for Lockheed shares on a one for one basis.

responsibility, if any, of these individuals for such violations. Further, where it deems it appropriate, the Commission, following the said investigation, is requested to prohibit permanently all Comsat officers and directors found to have violated federal statutes and rules from serving as officers and/or directors of any company (or subsidiary or affiliate thereof), which holds or seeks to hold a license, permit or other authorization issued by the Commission.

Petitioners observe that the Commission in the past has specifically determined that Comsat's unique status as a government sponsored enterprise makes it subject to regulatory supervision and authority sufficient to support administrative remedies of the type sought herein.²⁵

Respectfully submitted,


William L. Whitely

Trustee
Litigation Recovery Trust
515 Madison Avenue
Suite 2400
New York, New York 10022

July 21, 2000

²⁵ The Commission has regularly confirmed that Comsat must be held to its public interest standard (see 77 FCC 2d at 581). This ultimate standard, in the Commission's view, must be deemed well understood by the corporation and its investors. The Comsat has observed that :

"...COMSAT's investors clearly had prior notice that the corporation created by the 1962 Act would have special responsibilities and potential limitations. Prospective investors were made fully aware that (1) the scope of the corporation's activities would be limited to those defined by the 1962 Act, and (2) the corporation would be a rate-regulated firm subject to governmental oversight. (citing Prospectus of Communications Satellite Corporation, June 2, 1964.)" Comsat Study, 77 FCC 2d at 581-82.

The Commission has concluded that the investing public must be found to have "knowingly assumed the risk of any governmental limitations that would be placed on Comsat as a result of its special public obligations." *Id.* Certainly, if Comsat shareholders have been found to have assumed the risk of governmental limitations, there can be no question that the company's senior officers and directors, given their knowledge and involvement in the company's operations, must be deemed to have assumed similar, if not greater risk with respect governmental limitations which may be placed on their interests.

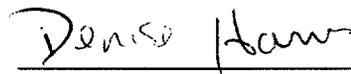
CERTIFICATE OF SERVICE

I, Denise Harris, hereby certify that I have this 22nd day of July, 2000 forwarded the foregoing PETITIONERS' RESPONSE TO OPPOSITION OF COMSAT CORPORATION TO PETITION FOR DIRECTED RULING BASED ON ADMISSION AGAINST INTEREST BY COMSAT CORPORATION via Federal Express or US Mail, postage prepaid to the following:

**Warren Zeger, Esq.
Keith Fagan, Esq.
Comsat Corporation
6560 Rock Spring Drive
Bethesda, MD 20817**

**Ray Bender, Esq.
Dow, Lohnes & Albertson
1200 New Hampshire Avenue, NW
Washington, DC 20036
Attorney for Lockheed Martin**

**Jim Ball
International Bureau
Associate Bureau Chief
Federal Communications Commission
445 12th St. S.W.
Washington DC 20554**



Denise Harris