

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

April 10, 2002

OFFICE OF
MANAGING DIRECTOR

Peter A. Rohrbach
Karis A. Hastings
David K. McGraw
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004

86-2851

Re: Request for Waiver and Refund
of Application Fees
Fee Control No. 0105238345701001

Dear Counsel:

This is in response to your request for waiver and refund of application fees in the amount of \$225,485.00 paid by General Electric Capital Corporation in connection with its applications for pro forma transfer of control of certain satellite space stations and earth stations (File Nos. SAT-T/C-20010522-0041 and SAT-T/C-20010522-0042).

You assert that the instant applications involve a pro forma change in organizational structure to be undertaken in connection with another transaction, already pending before the Commission, for which fees in the amount of \$226,705.00 have already been paid. You also contend that the pro forma applications do not raise any independent legal issues; that, but for timing issues, there would be no need for two separate applications; that the fee imposed clearly exceeds the expense incurred by the Commission in processing the application; that the Commission has forborne from requiring the filing of pro forma applications for a number of other services where, as here, there is no change in the underlying ownership or control of the licenses that the Commission has already approved; and that the Commission should, therefore, grant a waiver of the application filing fees for these pro forma applications. Alternatively, you urge that, at a minimum a partial waiver of at least 85%, which is comparable to the statutory reduction for pro forma applications in some other services, should be granted by the Commission.

You further argue that a recent ruling, *Lockheed Martin Corporation*, 16 FCC Rcd 12805 (2001), was decided incorrectly, but that there are in any event significant distinctions in the two cases which warrant a different outcome here. In this regard, you assert that *Lockheed* involved two separate transfer of control transactions covered by unrelated applications filed months apart, with no overlap in time between the two proceedings; that, in contrast, General Electric filed both a substantive and a pro

forma transfer application in connection with a single overall transaction; and that, based on these circumstances, the Commission should find that a waiver of the fee is warranted in connection with the filing of a pro forma ownership change that is directly related to a substantive transfer of control of a satellite license that is already before the Commission. Finally, you note that you are unaware of any situation similar to this one. Nonetheless, you claim, without supporting citation, that single merger transactions often involve pro forma restructuring steps prior to closing, but that applicants are not required to pay separate fees for each step in the transaction when they are all included in the initial substantive transfer of control application. According to you, the only difference here is that General Electric described the pro forma steps that were conditions precedent to its substantive transfer in a separate set of applications filed after, but during the pendency of, the overarching merger applications.

We have fully considered your arguments. In *Lockheed* the Commission, however, directly addressed and rejected similar contentions regarding pro forma transfers, stating:

there is "no justification in the statute or legislative history for apportioning fees according to the actual work done on any particular application."¹ We also have noted that "processing costs were but one factor in the rough calculus that resulted in the legislated fees."² Further, in implementing section 8, we stated that "[i]t is not our intention to make individualized determinations of the 'appropriate fee.' Rather, except in unusual cases in which the public interest requires otherwise, we will levy the fee as determined by Congress."³ In addition, unlike in some of the services in the statutory fee schedule, Congress did not elect to assess lower fees for pro forma transfers of geostationary satellites.⁴ Rather, it assessed the same fee for all assignments and transfers of these satellite licenses. Therefore, we shall not use our waiver authority either to make individualized determinations of costs or to generally lower fees in circumstances where Congress has chosen not to do so.

16 FCC Rcd at 12807.

Thus, the fact, that General Electric filed a second, pro forma transfer application while an earlier substantive transfer application was still pending before the Commission, provides no basis for relief. Congress has mandated a fee for each assignment application and the Commission has stated that it will not grant a waiver under these circumstances. Your further assertion that one fee has been imposed, when a pro forma transfer is combined with a substantive transfer in a single filing, is not

¹ *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 949 (1987).

² *Id.*

³ *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 3 FCC Rcd 5987 (1988).

⁴ See, e.g., 47 U.S.C. § 158(g)(Mass Media Services)(1.e).

supported by citation of precedent, but, in any event, is not relevant to the present situation, where General Electric in fact made two separate filings, each of which incurred an individual fee. Finally, your contentions about a 85% reduction of the fee are unavailing as they merely reflect your general disagreement with the statutory fee schedule. As the Commission stated in *Lockheed*, its waiver authority "is not intended to correct for perceived inequalities in the statute itself, but for good cause shown in individual situations." 16 FCC Rcd 12808. Accordingly, for the reasons set forth above, your request for waiver of the above-described application fees is denied.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger", written in a cursive style.

for
Mark A. Reger
Chief Financial Officer

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Applications of)	Fee Control Nos. 9901088210298001 &
Lockheed Martin Corporation)	9905288210337001
and Lockheed Martin Global)	
Telecommunications, Inc.)	

MEMORANDUM OPINION AND ORDER

Adopted: June 13, 2001; Released: June 21, 2001

By the Commission:

I. INTRODUCTION

1. The Commission has before it two Applications for Review, one filed by Lockheed Martin Corporation (Lockheed Martin) and the other filed by Lockheed Martin Global Telecommunications, Inc. (LMGT) on behalf of LMGT Astro License, LLC (LMGT Astro) (collectively, Lockheed), on December 27, 2000. Lockheed seeks review of decisions of the Office of Managing Director denying Requests for Partial Waiver and Refund of Fees filed by Lockheed.¹ The Applications for Review involve similar situations and issues; therefore we will address them together.² For the reasons discussed below we deny the Applications for Review.

II. BACKGROUND

2. Lockheed Martin applied for and received authority to assign its authorizations to launch and operate nine Ka-Band Astrolink System geostationary satellites (Astrolink System) to LMGT Astro, an indirect wholly owned subsidiary of Lockheed Martin.³ LMGT Astro then applied for

¹ See letters dated October 18, 2000, from Mark A. Reger, Chief Financial Officer, to Raymond G. Bender, Esq.

² The Applications for Review present virtually identical arguments; the one difference is that the Lockheed Martin Application for Review presents an additional argument regarding the pro forma nature of its assignment to LMGT Astro.

³ See File No. SAT-ASG-1990107-00008 (granted Feb. 25, 1999).

could incur in processing its applications; Lockheed Martin argues that this is particularly true since its application involved a pro forma transfer. We have stated, however, that there is "no justification in the statute or legislative history for apportioning fees according to the actual work done on any particular application."¹² We also have noted that "processing costs were but one factor in the rough calculus that resulted in the legislated fees."¹³ Further, in implementing section 8, we stated that "[i]t is not our intention to make individualized determinations of the 'appropriate fee.' Rather, except in unusual cases in which the public interest requires otherwise, we will levy the fee as determined by Congress."¹⁴ In addition, unlike in some of the services in the statutory fee schedule, Congress did not elect to assess lower fees for pro forma transfers of geostationary satellites.¹⁵ Rather, it assessed the same fee for all assignments and transfers of these satellite licenses.¹⁶ Therefore, we shall not use our waiver authority either to make individualized determinations of costs or generally to lower fees in circumstances where Congress has chosen not to do so.

6. Lockheed also argues that the Office of Managing Director should have addressed in the waiver process the disparity between the higher fees Congress set for assignment of geostationary satellite systems and the lower fees for assignments of non-geostationary satellite systems.¹⁷ For example, Lockheed Martin argues that it should not have to pay fees of \$57,510.00 to accomplish an internal restructuring, when an applicant in the non-geostationary satellite system service would pay only \$8,810.00 for an assignment involving a third party.¹⁸ Lockheed further argues that reducing the instant geostationary satellite application fees would preserve and promote competition among all providers of satellite communications services.¹⁹

7. Lockheed's arguments do not justify a waiver. Congress set the application fee for assignment of non-geostationary satellite systems per request, rather than per satellite.²⁰ Thus,

however, specifically dealt with a fee assessed by the agency under the Independent Office Assessment Act (IOAA) (now codified at 31 U.S.C. § 9701). 554 F.2d at 1096. The Supreme Court had held that the statutory language and intent of Congress in the IOAA was to require agencies assessing fees under the IOAA to base such fees on the value to recipients, and the Court of Appeals for the District of Columbia Circuit thus analyzed the IOAA fees at issue under that standard. 554 F.2d at 1097. The fees at issue in the instant matters, however, were not established under the IOAA, but rather are fees specifically set by Congress.

¹² *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 949 (1987).

¹³ *Id.*

¹⁴ *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 3 FCC Rcd 5987 (1988).

¹⁵ *See, e.g.*, 47 U.S.C. § 158(g)(Mass Media Services)(1.e).

¹⁶ *Id.*, § 158(g)(Common Carrier Services)(16.c).

¹⁷ Lockheed Martin Application for Review at 6-8; LMG T Application for Review at 6-8.

¹⁸ Lockheed Martin Application for review at 5; LMG T Application for Review at 5.

¹⁹ Lockheed Martin Application for review at 10; LMG T Application for Review at 9.

²⁰ 47 U.S.C. § 158(g)(22)(c).

Lockheed essentially is reiterating the argument, which we have rejected, that the Commission should not collect the statutory application fees in this matter because the applicant does not believe they represent the costs the Commission will incur in processing the individual application. After careful review of the issues raised in the Application for Review, we therefore do not find any basis for modifying the decision of the Office of Managing Director denying Lockheed's Request for Partial Waiver and Refund of Fees.

IV. ORDERING CLAUSES

ACCORDINGLY, IT IS ORDERED that the Applications for Review, filed on December 27, 2000, by Lockheed Martin Corporation and Lockheed Martin Global Telecommunications, Inc. ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary



Karis A. Hastings
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CONFIRMATION NUMBER: (202) 418-7550

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILE STAMP COPY

In the Matter of)
)
GENERAL ELECTRIC)
CAPITAL CORPORATION)
)
Applications for Consent to)
Pro Forma Transfer of Control)

File Nos. SAT-T/C-20010522-0041
SAT-T/C-20010522-0042

RECEIVED

MAY 29 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Managing Director

REQUEST FOR WAIVER AND REFUND OF FEES

Pursuant to Section 8(d)(2) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 158(d)(2), General Electric Capital Corporation ("GE Capital" or the "Applicant"), by its attorneys, hereby requests a waiver and refund of the \$225,485 processing fee for its above-captioned applications for consent to the *pro forma* transfer of control of certain satellite space stations and earth stations (the "*Pro Forma* Applications" or "Applications").

The *Pro Forma* Applications relate to a transaction which is already pending before the Commission and for which fees in the amount of \$226,705 have already been paid. The Applications involve a *pro forma* change in organizational structure to be undertaken in connection with the primary transaction, and do not raise any independent legal issues for the Commission's consideration. As a result,

Under these circumstances, retention by the Commission of the fee amount paid by GE Capital would effectively constitute a double payment of fees for the overall transaction (making a total charge of nearly half a million dollars) and would be inconsistent with the statutory purpose of the application processing fee requirements.

BACKGROUND

The *Pro Forma* Applications propose a simple change in the ownership of GE Subsidiary, Inc. 22 ("GE Sub-22"), which is the indirect parent of GE American Communications, Inc. ("GE Americom") and Columbia Communications Corporation ("Columbia").¹ A new intermediate entity is being inserted into the ownership chain between GE Sub-22 and GE Capital. This change is directly related to the proposed merger transaction pursuant to which GE Sub-22 will become a wholly-owned subsidiary of SES Global S.A. ("SES Global"). See File Nos. SAT-T/C-20010402-00030 *et al.*

Specifically, in preparation for the merger transaction with SES Global, a new entity has been incorporated pursuant to the laws of Gibraltar, GE Capital Luxembourg Holdings Limited ("Newco"). Newco is a wholly-owned subsidiary of CFE, Inc. ("CFE"), which currently holds 100% of the common stock of GE Sub-22. CFE plans to transfer approximately 74.6% of the common stock of GE

¹ GE Americom holds space station, earth station, and microwave licenses and Section 214 authorizations, and Columbia is a space station licensee. GE Americom and Columbia will continue to hold their licenses and authorizations subsequent to the proposed *pro forma* transaction.

Sub-22 to Newco. CFE and Newco are both indirect wholly-owned subsidiaries of General Electric Company ("GE"). Upon closing of the transaction with SES Global, CFE and Newco will each receive a portion of the compensation paid to GE in exchange for their shares of GE Sub-22.

These changes in the ownership structure of GE Sub-22 are clearly *pro forma*. GE Sub-22 is today and will remain an indirect wholly-owned subsidiary of GE. There will be no change in the ultimate ownership and control of GE Sub-22, GE Americom, or Columbia. As noted above, GE Americom and Columbia will each continue to hold their current licenses and authorizations.²

Pursuant to the fees specified in the International Bureau's Fee Filing Guide, GE Capital has submitted processing fees for the *Pro Forma* Applications in the amount of \$225,485. The International Bureau's Fee Filing Guide does not differentiate between applications for substantial changes in control and *pro forma* applications. As a result, payment of this amount is required even though the Applications will require very little processing by the Commission, and even though GE Americom and SES Global have already paid another \$226,705 in processing

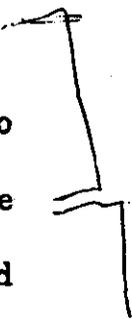
² Furthermore, this *pro forma* transfer of control of GE Americom and Columbia raises no issues under Section 310(b)(4) of the Communications Act. Newco is controlled by U.S. citizens and wholly-owned by a U.S. corporation. Under these circumstances, if the Commission were to conduct a home market analysis, it must conclude that the home market of Newco is the U.S. See, e.g., *Market Entry and Regulation of Foreign-Affiliated Entities*, 11 FCC Rcd 3873, 3951-3952 (1995); *AT&T Corp. and Loral SpaceCom Corp.*, 12 FCC Rcd 925, 927-928 (Int'l Bur. 1997).

fees for the applications for consent to the transfer of control of GE Americom and Columbia to SES Global.³

I. WAIVER OF THE FEE REQUIREMENT IN THIS CASE AVOIDS AN INEQUITABLE DOUBLE PAYMENT

The circumstances here provide a strong public interest justification for waiver of the processing fees GE Capital has paid. As discussed above, the *Pro Forma* Applications are directly related to the larger merger transaction involving SES Global that is already being considered by the Commission. The text of the application for the transfer of control of GE Americom and Columbia to SES Global discusses the insertion of Newco into GE Sub-22's ownership chain.⁴ Thus, this minor ownership change is already being considered by the Commission in the context of its evaluation of that larger transaction.

But for a timing issue, there would be no need for separate applications addressing this *pro forma* change in the ownership structure – it could simply be addressed as part of the Commission's action on the SES Global merger. However, in order to facilitate the larger merger transaction as structured by the parties, it is necessary that the transfer of a portion of GE Sub-22's common stock to Newco take place in advance of the closing of the SES Global transaction. Given the potential application processing time for the merger application, GE Capital decided



³ See Attachment A.

⁴ Application for Consent to Transfer of Control, File Nos. SAT-T/C-20010402-00030 *et al.*, at 7 & n.10 (filed Apr. 2, 2001).

it was more prudent to file these separate *Pro Forma* Applications rather than incorporate the request for authority for the *pro forma* changes into the merger applications directly (as it could have). Again, however, the *Pro Forma* Applications are integrally related to the pending SES Global merger and raise no material issues requiring separate consideration by the Commission.

As noted above, GE Capital and SES Global have already paid substantial application processing fees in the amount of \$226,705 in connection with the applications for consent to transfer of control of the GE Americom and Columbia licenses and authorizations to SES Global.⁶ The parties did not request a waiver of any part of that application fee amount. The *Pro Forma* Applications represent a minor change in the ownership structure of GE Americom and Columbia that is a small but necessary step in the completion of the larger proposed merger. Effectively, then, the Commission has been paid twice for changes directly related to the same ultimate transfer of control and involving the same set of licenses.

The Commission has the statutory authority to waive application processing fees "in any specific instance for good cause shown, where such action

⁶ The amount paid for the applications relating to the SES Global transaction is somewhat higher than the amount paid by GE Capital for the *pro forma* Applications because no filing was necessary for the *pro forma* transfer of control of GE Americom's Section 214 authorizations or microwave licenses pursuant to the forbearance policies discussed below.

would promote the public interest.”⁶ The purpose of application processing fees is to cover the costs associated with processing applications. According to Section 8(e) of the Act, application fees are intended to “reimburse the United States for amounts appropriated for use by the Commission in carrying out its functions under this Act.” Fees that the Commission imposes on applicants should bear a reasonable relation to the expense incurred by the Commission in processing the application. In *National Cable Television Association v. FCC*, the D.C. Circuit held that “a ‘fee’ is a payment for a special privilege or service rendered, not a revenue measure. If the ‘fee’ unreasonably exceeds the value of the specific services for which it is charged it will be held unlawful.”⁷

Here, the amount of the payment required in connection with the Applications clearly exceeds the applicable costs or the value of the services rendered. As noted above, the facts of this transaction are already before the Commission as part of the SES Global merger. Furthermore, like other *pro forma* transfers of control, this transaction does not raise substantive issues for the Commission’s consideration. In the case of a *pro forma* transfer of control, no actual transfer of ultimate control occurs. The Commission has forborne from requiring the submission of *pro forma* applications for a number of services, finding that “approval of *pro forma* assignments and transfers is not needed because such

⁶ 47 U.S.C. §158(d)(2); see also 47 C.F.R. §1.1117(a) (“fees . . . may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest”).

⁷ 554 F.2d 1094, 1108-09 (D.C. Cir. 1976).

transactions, by their nature, do not change the underlying ownership or control of licenses that the Commission has already reviewed and approved.”⁸ Such transactions are “considered presumptively in the public interest because no substantial change of control is involved.” *Id.*

Because *pro forma* applications raise no substantive issues for the Commission’s consideration and generally require only brief examination by the Commission, the Commission does not incur the same costs in processing *pro forma* applications as it does for substantive transfer of control applications. *Pro forma* applications do not go on public notice and consume little processing time by the Commission’s staff. The amount of Commission resources required to consider such applications is negligible as compared to substantive applications.

As noted above, the Commission has decided to forebear from requiring the filing of applications or payment of any processing fee for some services. For example, under § 63.24 of the Commission’s Rules, the *pro forma* transfer of Section 214 authorizations does not require prior Commission approval, and thus no fee is required. Likewise, under § 1.948(c), the *pro forma* transfer or assignment of a wireless license involving a telecommunications carrier does not require prior Commission approval, and thus requires no fee. However, filing of *pro forma* applications continues to be required for space station and earth station licensees,

⁸ *In re Federal Communications Bar Association’s Petition for Forbearance, Memorandum Opinion and Order*, 13 FCC Rcd. 6293, at ¶ 18 (1998).

and these applications are subject to the same filing fee requirements as are non-*pro forma* assignments and transfers.

Some parties have suggested that the Commission similarly should streamline the *pro forma* application process for satellites.⁹ But in any event, a full refund of the \$225,485 in fees paid by GE Capital clearly is warranted here. This transaction is already being considered by the Commission pursuant to applications for which fees of \$226,705 have already been paid and requires no separate analysis whatsoever. In these circumstances, retention by the Commission of the fee payment for the *Pro Forma* Applications would result in GE Capital being charged twice for changes occurring as part of the same transaction. The Commission should therefore grant a waiver of the processing fee requirements for the *Pro Forma* Applications.

II. AT A MINIMUM, THE COMMISSION SHOULD GRANT A PARTIAL WAIVER

At a minimum, if the Commission does not order a full refund it should grant a substantial partial waiver of the processing fees for these Applications to bring the fees more in line with the Commission's costs. The Commission has clear authority to grant a fee reduction. For example, the Office of the Managing Director reduced the fees for an application for authority to modify the Astrolink satellite

⁹ See, e.g., Comments of the Satellite Industry Association to the *Secondary Markets Notice of Proposed Rulemaking* in WT Dkt. No. 00-230, at 6-8 (Feb. 9, 2001); Comments of Loral Space & Communications Ltd. to the *2000 Biennial Regulatory Review*, IB Docket No. 00-248 (March 26, 2001).

system from \$72,030 to \$5,000 (a payment of less than seven percent of the originally assessed amount), because it determined that "the fees contained in the Fee Schedule bear scant relationship to the resources required to process [the application]." ¹⁰

In other services in which the Commission continues to require the submission of applications for *pro forma* transfers of control and assignments, the Commission at least provides for a fee structure that recognizes that *pro forma* applications do not impose the same processing costs on the Commission staff as applications for substantial transfers of control. For example, licensees of commercial broadcast stations (television stations and AM and FM radio stations) are required to pay \$755 for applications for consent to a non-*pro forma* transfer of control or assignment, while the fee for *pro forma* transactions is only \$110. The discounted fee for *pro forma* applications, which represents slightly less than 15% of the fee for "long form" transactions, is appropriate because of the lower average processing time for *pro forma* applications.

If the Commission does not order a full refund here, it should at least refund a substantial portion of the fees paid by GE Capital for these *pro forma* Applications. The fee structure applicable to mass media services clearly supports reducing the \$225,485 payment GE Capital submitted by at least 85%. There is simply no justification for the Commission to retain GE Capital's full payment under the circumstances here.

¹⁰ See Letter from Marilyn J. McDermott to James F. Rogers, April 11, 1994.

CONCLUSION

The Applications do not raise any material issues for the Commission's consideration and relate to a larger transfer of control that is already pending before the Commission. As a result, the processing of these Applications will not impose significant costs on the Commission, and a strict application of the fee structure would result in GE Capital being charged twice for changes related to a single transaction. GE Capital therefore respectfully requests that the Commission exercise its statutory authority to waive all or a substantial part of the amount GE Capital has paid to cover the required processing fees for the Applications.

Respectfully submitted,

General Electric Capital Corporation

By: 

Peter A. Rohrbach
Karis A. Hastings
David K. McGraw
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600

May 29, 2001

INSTRUCTIONS CAREFULLY PROCEEDING

April 2, 2002
FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Transfer-
Billing Fee Payment
CHECKBOX #

5

SPECIAL USE
FCC USE ONLY

SECTION A - PAYER INFORMATION

PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)
American Communications, Inc. (3) TOTAL AMOUNT PAID (U.S. Dollars and \$226.705

STREET ADDRESS LINE NO. 1
Research Way
STREET ADDRESS LINE NO. 2

CITY
Edison (7) STATE NJ (8) ZIP CODE 08540 - 6684

DAYTIME TELEPHONE NUMBER (include area code) (10) COUNTRY CODE (if not in U.S.A.)
(9) 987-4448

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

PAYER (FRN) (12) PAYER (TIN)
-7623-66 132849985

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

APPLICANT NAME
Global S.A.
STREET ADDRESS LINE NO. 1
315 Chateau de Betzdorf
STREET ADDRESS LINE NO. 2
Embours
CITY

(17) STATE (18) ZIP CODE

DAYTIME TELEPHONE NUMBER (include area code) (20) COUNTRY CODE (if not in U.S.A.)
-352-710-725-267 LU

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

APPLICANT (FRN) (22) APPLICANT (TIN)
REIGN FOREIGN

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(4) CALL SIGN/OTHER ID 00056	(24A) PAYMENT TYPE CODE CNX	(25A) QUANTITY 1
A) FEE DUE FOR (FTC) \$405.	(27A) TOTAL FEE \$405.	FCC USE ONLY
A) FCC CODE 1	(29A) FCC CODE 2	

(6B) CALL SIGN/OTHER ID 000268 et. al	(24B) PAYMENT TYPE CODE CFX	(25B) QUANTITY 115
(6B) FEE DUE FOR (FTC) \$135.	(27B) TOTAL FEE \$15525.	FCC USE ONLY
(8B) FCC CODE 1	(29B) FCC CODE 2	

SECTION D - CERTIFICATION

(9) CERTIFICATION STATEMENT
I, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.
SIGNATURE _____ DATE _____

SECTION E - CREDIT CARD PAYMENT INFORMATION

(31) MASTERCARD/VISA ACCOUNT NUMBER: _____ EXPIRATION _____
 MASTERCARD

VISA I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described.
SIGNATURE _____ DATE _____

ANCE ADVICE (Continuation Sheet)

FEDERAL COMMUNICATIONS COMMISSION

SPECIAL USE
FCC USE ONLY

USE THIS SECTION ONLY FOR EACH ADDITIONAL APPLICANT
SECTION BB - ADDITIONAL APPLICANT INFORMATION

APPLICANT NAME	
STREET ADDRESS LINE NO. 1	
STREET ADDRESS LINE NO. 2	
CITY	(17) STATE (18) ZIP CODE
DAYTIME TELEPHONE NUMBER (include area code)	(20) COUNTRY CODE (if not in U.S.A.)
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED	
APPLICANT (FRN)	(22) APPLICANT (TIN)

IF MORE BOXES ARE NEEDED, USE ADDITIONAL FCC 159-C CONTINUATION SHEETS TO LIST EACH SERVICE
SECTION CC - PAYMENT INFORMATION

CALL SIGN/OTHER ID 267	(24A) PAYMENT TYPE CODE CNO	(25A) QUANTITY 1
FEE DUE FOR (PTC) \$405.	(27A) TOTAL FEE \$405.	FCC USE ONLY
FCC CODE 1	(29A) FCC CODE 2	

CALL SIGN/OTHER ID 24 et. al.	(24B) PAYMENT TYPE CODE CFO	(25B) QUANTITY 45
FEE DUE FOR (PTC) \$135.	(27B) TOTAL FEE \$6075.	FCC USE ONLY
FCC CODE 1	(29B) FCC CODE 2	

CALL SIGN/OTHER ID 1856 & E 871857	(24C) PAYMENT TYPE CODE CZV	(25C) QUANTITY 1
FEE DUE FOR (PTC) \$2010.	(27C) TOTAL FEE \$2010.	FCC USE ONLY
FCC CODE 1	(29C) FCC CODE 2	

CALL SIGN/OTHER ID 0973	(24D) PAYMENT TYPE CODE CZV	(25D) QUANTITY 1
FEE DUE FOR (PTC) \$2010.	(27D) TOTAL FEE \$2010.	FCC USE ONLY
FCC CODE 1	(29D) FCC CODE 2	

CALL SIGN/OTHER ID 0531 & E890533	(24E) PAYMENT TYPE CODE CZV	(25E) QUANTITY 1
FEE DUE FOR (PTC) \$2010.	(27E) TOTAL FEE \$2010.	FCC USE ONLY
FCC CODE 1	(29E) FCC CODE 2	

CALL SIGN/OTHER ID 90253 through E890255	(24F) PAYMENT TYPE CODE CZV	(25F) QUANTITY 1
FEE DUE FOR (PTC) \$2010.	(27F) TOTAL FEE \$2010.	FCC USE ONLY
FCC CODE 1	(29F) FCC CODE 2	

ANCE ADVICE (Continuation Sheet)

FEDERAL COMMUNICATIONS COMMISSION

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USE THIS SECTION ONLY FOR EACH ADDITIONAL APPLICANT
SECTION BB - ADDITIONAL APPLICANT INFORMATION

APPLICANT NAME	
STREET ADDRESS LINE NO. 1	
STREET ADDRESS LINE NO. 2	
CITY	(17) STATE (18) ZIP CODE
DAYTIME TELEPHONE NUMBER (include area code)	(20) COUNTRY CODE (if not in U.S.A.)
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED	
APPLICANT (FRN)	(22) APPLICANT (TIN)

IF MORE BOXES ARE NEEDED, USE ADDITIONAL FCC 159-C CONTINUATION SHEETS TO LIST EACH SERVICE
SECTION CC - PAYMENT INFORMATION

CALL SIGN/OTHER ID 004 through E900007	(24A) PAYMENT TYPE CODE CZV	(25A) QUANTITY 1
FEE DUE FOR (PTC) \$2010.	(27A) TOTAL FEE \$2010.	FCC USE ONLY
FCC CODE 1	(29A) FCC CODE 2	
CALL SIGN/OTHER ID Space Stations (GE)	(24B) PAYMENT TYPE CODE BFY	(25B) QUANTITY 23
FEE DUE FOR (PTC) \$6670.	(27B) TOTAL FEE \$153410.	FCC USE ONLY
FCC CODE 1	(29B) FCC CODE 2	
CALL SIGN/OTHER ID Space Stations (Columbia)	(24C) PAYMENT TYPE CODE BFY	(25C) QUANTITY 6
FEE DUE FOR (PTC) \$6670.	(27C) TOTAL FEE \$40020.	FCC USE ONLY
FCC CODE 1	(29C) FCC CODE 2	
CALL SIGN/OTHER ID Station 214 Authorizations	(24D) PAYMENT TYPE CODE CUT	(25D) QUANTITY 1
FEE DUE FOR (PTC) \$815.	(27D) TOTAL FEE \$815.	FCC USE ONLY
FCC CODE 1	(29D) FCC CODE 2	
CALL SIGN/OTHER ID	(24E) PAYMENT TYPE CODE	(25E) QUANTITY
FEE DUE FOR (PTC)	(27E) TOTAL FEE	FCC USE ONLY
FCC CODE 1	(29E) FCC CODE 2	
CALL SIGN/OTHER ID	(24F) PAYMENT TYPE CODE	(25F) QUANTITY
FEE DUE FOR (PTC)	(27F) TOTAL FEE	FCC USE ONLY
FCC CODE 1	(29F) FCC CODE 2	

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August 10, 2001

BY HAND DELIVERY

Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Request for Waiver and Refund of Fees Paid for Applications for Consent to *Pro Forma* Transfer of Control of GE American Communications, Inc. and Columbia Communications Corporation, File Nos. SAT-T/C-20010522-00041/00042; SES-T/C-20010522-00959; SES-T/C-20010522-00961/00966 & ISP-PDR-20010522-00029

Dear Mr. Fishel:

General Electric Capital Corporation ("GE Capital") hereby supplements its above-referenced Request for Waiver and Refund of Fees, filed May 29, 2001 ("Waiver Request"). In particular, GE Capital wishes to point out significant differences between the facts presented in the instant case and the circumstances that were before the Commission recently in *Applications of Lockheed Martin Corporation and Lockheed Martin Global Telecommunications, Inc.*, FCC 01-189 (rel. June 21, 2001) ("*Lockheed Martin*").

BACKGROUND

In the Waiver Request, GE Capital seeks a refund of the \$225,485 processing fee it paid for applications seeking consent to the *pro forma* transfer of control of space station and earth station licenses. As GE Capital explained, the *pro*

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forma transfer involved a minor change in organizational structure directly related to its larger merger transaction with SES Global S.A. ("SES Global"), a substantive transfer of control currently pending before the Commission for which fees in the amount of \$226,705 already have been paid. The *pro forma* transaction presented no independent legal issues requiring Commission consideration. GE Capital argued that retention of the *pro forma* fees in this case would effectively constitute an unfair double payment. Waiver Request at 1-2.

The *Lockheed Martin* decision also involved a request for waiver of fees relating to transfers of satellite authorizations. Lockheed Martin had argued that the fees associated with the transfers did not reflect the Commission's processing costs. Lockheed Martin requested that the Commission consider two options for reducing the fees to be more consistent with the applicable costs. First, the fees could be reduced to \$8,810 for each transaction, an amount that corresponds with the fee for transfers of nongeostationary satellite systems. Second, the fees could be calculated on a per orbital location, rather than a per satellite basis. See *Lockheed Martin* at ¶ 2.

The Commission rejected Lockheed Martin's request for fee reductions, refusing to recalculate the fees either on a per system or per orbital location basis. The Commission noted that application fees were set by Congress. *Id.* at ¶ 5. The Commission cited its previous determination that it would not "make individualized determinations of the 'appropriate fee.' Rather, except in unusual cases in which the public interest requires otherwise, we will levy the fee as determined by Congress." *Id.*, quoting *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 3 FCC Rcd 5987 (1988).

GE Capital believes that the different facts of GE Capital's Waiver Request clearly make this just such an "unusual case," requiring a different outcome here. Waiver of the fees paid by GE Capital for the *pro forma* applications is necessary to avoid an inequitable double payment of fees for a single overall transaction.

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DISCUSSION

GE Capital wishes to be clear as to the nature of its fee waiver request, and how it differs from the situation presented in the *Lockheed Martin* matter.¹

GE Capital is not seeking a refund of any of the \$226,705 in fees already paid in connection with its pending merger transaction with SES Global. Under the merger transaction, GE Capital was required to pay twenty-nine times the \$6,670 space station transfer of control fee simply because its two subsidiaries hold twenty-nine space station authorizations (in addition to substantial additional fees based on other licenses they held). We recognize that the amount of time and effort that must be expended by Commission staff in considering a transfer application may vary somewhat based on the complexity of the underlying transaction. However, the number of satellite authorizations held by a company has no significant impact on the costs incurred to process an application for consent to transfer control of that company. That said, GE Capital has not challenged the per satellite fee in the context of its pending substantive merger application. It has paid twenty-nine times the per satellite transfer fee, and considers that matter final.

However, GE Capital does view as unjust the assessment of yet another \$225,485² in fees for a *pro forma* application that is directly related to the substantive transfer of control application that already is pending. The *Lockheed Martin* case involved two separate transfer of control transactions covered by unrelated applications filed months apart, and addressed in two different fee refund requests – although the Commission chose to consider applications for review

¹ For the record, GE Capital contends that the *Lockheed Martin* decision is decided incorrectly, including but not limited to the Commission's refusal to adjust fees for stand-alone *pro forma* transfer of control applications of satellite companies. GE Capital's Waiver Request already sets forth our position on this matter. The purpose of this Supplement is to address fundamental distinctions between this case and the circumstances at issue in the *Lockheed Martin* decision.

² The minor difference from the prior fee reflects an intervening change in the number of earth station licenses held by the company.

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concerning the two requests together for purposes of the order. In contrast, GE Capital filed both a substantive and a *pro forma* transfer application in connection with a single overall transaction. The *pro forma* restructuring was occasioned by and directly linked to the substantive transfer of control that will occur as a result of the SES Global merger. The narrative section of the transfer application filed for that merger explicitly discussed the *pro forma* change. The *pro forma* transaction presented no new issues for the Commission's consideration. In fact, but for timing considerations, GE Capital could have sought approval of both the *pro forma* and the substantive transfer of control in a single set of applications.

It would be particularly unfair under these special circumstances to force GE Capital to incur a double fee payment, pushing total fees for this transaction to half a million dollars. To avoid such an inequitable outcome, the Commission should find that where a *pro forma* change is directly related to a substantive transfer of control of a satellite licensee that already is before the Commission, waiver of the fee covering the *pro forma* transaction is justified. This result is consistent with the public interest and the Commission's statutory mandates in administering the processing fee system.³

GE Capital recognizes that the application processing fees were adopted by Congress. However, Congress also expressly authorized the Commission to "waive or defer payment of an application fee in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. § 158(d)(2). The Managing Director has previously used this discretion to reduce the fee amount collected upon a finding that "the fees contained in the Fee Schedule

³ Alternatively, for the reasons set forth in the Waiver Petition, the Commission should grant a waiver of the *pro forma* fees to reflect the minimal burdens that such applications actually place on the Commission. Indeed, any other result would create a competitive inequity given that competing NGSO satellite companies and terrestrial telecom companies may engage in *pro forma* changes either on a notice basis without fees, or under much lower *pro forma* fee structures. Again, however, this Supplement focuses on a more narrow basis for waiver that is fully consistent with the *Lockheed Martin* decision.

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bear scant relationship to the resources required to process" the application.⁴ If the Commission's statutory waiver authority means anything, GE Capital submits that it must be applied in this instance to avoid double payment of fees in the context of a single transaction, especially where the total amount of the fees is so great.

Grant of a fee waiver under these very limited circumstances would permit the Commission to address what would otherwise be a significant inequity. The instant case presents the Commission with special facts that warrant special relief. Few if any similar satellite application cases will arise with both substantive and *pro forma* applications for a single transaction. Moreover, grant of a waiver here on these terms would be consistent with the *Lockheed Martin* decision, which dealt with two separate transfer proceedings, as discussed above.

For the foregoing reasons, and those presented in the Waiver Request, GE Capital respectfully requests a waiver and full or partial refund of the processing fees for the *pro forma* applications. Please address any questions regarding this matter to the undersigned.

Respectfully submitted,



Peter A. Rohrbach
Karis A. Hastings 631-5767
Counsel for General Electric Capital
Corporation

cc: Jennifer Gilsenan
JoAnn Lucanik
Claudette Pride

⁴ See Letter from Marilyn J. McDermett to James F. Rogers, April 11, 1994.

Payment Transactions Detail Report

Date: 09/13/2001

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Fcc Account Number	Payer TIN	Received Date							
0105238345701001	GE AMERICAN COMMUNICATIONS INC FOUR RESEARCH WAY PRINCETON NJ 08540	WP00002815	0132849985	6/22/2001 00:00:0							
Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$225,485.00	\$225,485.00	1	CNX	1	E000056	GENERAL ELECTRIC CAPITAL CORPO	06927		\$405.00	5	PMT
\$225,485.00	\$225,485.00	3	CNO	1	E000267	GENERAL ELECTRIC CAPITAL CORPO	06927		\$405.00	5	PMT
\$225,485.00	\$225,485.00	2	CFX	112	E000268	GENERAL ELECTRIC CAPITAL CORPO	06927		\$15,120.00	5	PMT
\$225,485.00	\$225,485.00	4	CFO	45	E3524	GENERAL ELECTRIC CAPITAL CORPO	06927		\$6,075.00	5	PMT
\$225,485.00	\$225,485.00	5	CZV	1	E871856	GENERAL ELECTRIC CAPITAL CORPO	06927		\$2,010.00	5	PMT
\$225,485.00	\$225,485.00	6	CZV	1	E880973	GENERAL ELECTRIC CAPITAL CORPO	06927		\$2,010.00	5	PMT
\$225,485.00	\$225,485.00	8	CZV	1	E890253	GENERAL ELECTRIC CAPITAL CORPO	06927		\$2,010.00	5	PMT
\$225,485.00	\$225,485.00	7	CZV	1	E890531	GENERAL ELECTRIC CAPITAL CORPO	06927		\$2,010.00	5	PMT
\$225,485.00	\$225,485.00	9	CZV	1	E900004	GENERAL ELECTRIC CAPITAL CORPO	06927		\$2,010.00	5	PMT
\$225,485.00	\$225,485.00	10	BFY	23	SOSPACES	GENERAL ELECTRIC CAPITAL CORPO	06927		\$153,410.00	5	PMT
\$225,485.00	\$225,485.00	11	BFY	6	SOSPACES	GENERAL ELECTRIC CAPITAL CORPO	06927		\$40,020.00	5	PMT
Total		11							\$225,485.00		

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December 6, 2001

BY HAND DELIVERY

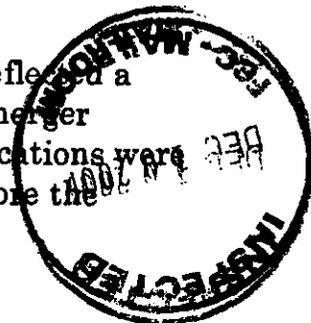
Mr. John Riffer, Esq.
Office of the General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Request for Waiver and Refund of Fees Paid for
Applications for Consent to *Pro Forma* Transfer of
Control of GE American Communications, Inc. and
Columbia Communications Corporation,
File Nos. SAT-T/C-20010522-00041/00042;
SES-T/C-20010522-00959;
SES-T/C-20010522-00961/00966 &
ISP-PDR-20010522-00029**

Dear Mr. Riffer:

Enclosed on behalf of General Electric Capital Corporation ("GE Capital") are additional materials relating to GE Capital's above-referenced Request for Waiver and Refund of Fees, filed May 29, 2001 ("Waiver Request") and supplemented on August 10, 2001 ("August Supplement"). Specifically, we have enclosed for your files copies of the underlying applications for authority for the *pro forma* transfer of control of space station and earth station licenses that are the subject of the Waiver Request. We have also enclosed a copy of the related applications for authority for the substantive merger transaction with SES Global S.A. ("SES Global").

As we have explained, the *pro forma* transfer of control reflected a minor change in ownership structure that was directly related to the merger transaction with SES Global. At the time the *pro forma* transfer applications were filed, the applications relating to the merger were already pending before the



Mr. John Riffer, Esq.

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Page 2

Commission, and fees in the amount of \$226,705 had already been paid with respect to those applications. GE Capital has not sought any reduction or waiver of the fees paid for the SES Global merger applications.

However, GE Capital requested a full or partial waiver of the additional \$225,485 processing fee it paid for the *pro forma* applications due to the unique circumstances presented by this proceeding. These circumstances make GE Capital's request factually distinguishable from the situation before the Commission recently in *Applications of Lockheed Martin Corporation and Lockheed Martin Global Telecommunications, Inc.*, FCC 01-189 (rel. June 21, 2001) ("*Lockheed Martin*").

The crucial difference is that the *Lockheed Martin* case involved refund requests for fees paid in two separate and unrelated proceedings; in contrast, GE Capital is seeking a refund only in conjunction with fees paid for a set of *pro forma* applications that were directly related to and occasioned by the single SES Global merger transaction. Thus, two fee payments were appropriate in the *Lockheed Martin* case, but only one should be charged to GE Capital here.

Specifically, in *Lockheed Martin*, a *pro forma* assignment of space station licenses was filed and granted.¹ Then, several months later, the licensee sought authority for a substantive assignment of the licenses.² There was no overlap in time between the two proceedings. The proceedings and transactions were not interrelated. They simply involved the same set of licenses.

In contrast, as noted above, GE Capital filed the *pro forma* applications here for reasons directly related to implementation of the SES Global merger. The *pro forma* change was a key step in preparation for closing the merger. The *pro forma* applications were filed and decided while the substantive transfer of control applications were pending before the Commission and specifically cross-

¹ See File No. SAT-ASG-19990107-00008 (granted Feb. 25, 1999).

² See *Application of LMGT Astro Licensee, Assignor and Astrolink International, LLC, Assignee*, 15 FCC Rcd 21777 (Sat. & Radiocomm. Div. 1999).

Mr. John Riffer, Esq.

December 6, 2001

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referenced the merger applications to which they were linked.³ Furthermore, the *pro forma* applications raised no independent legal issues for the Commission to consider.

Thus, the *Lockheed Martin* decision is distinguishable for the core reasons noted above. It involved two proceedings; here there is only one. GE Capital believes that it is therefore entitled to a full or partial fee waiver as a matter of equity, and that grant of relief here is consistent with the Commission's statutory mandate to waive fees upon a demonstration of good cause and in order to promote the public interest. See 47 U.S.C. § 158(d)(2).

Equity is all the more important given the size of the fees here. Fee relief will permit the Commission to avoid what in effect is a double charge for fees – raising the total amount of fees paid to nearly half a million dollars – for applications related to a single transaction.⁴ GE Capital only is requesting a narrow ruling on these unique facts. The Commission should determine that a refund is appropriate where, as here, a *pro forma* ownership change is directly related to a substantive transfer of control of a satellite licensee that already is before the Commission. We are not aware of any similar case to this one.⁵

³ See Exhibit A of *Pro Forma* Applications, File Nos. SAT-T/C-20010522-0041/0042 *et al.*

⁴ GE Capital continues to believe that *Lockheed Martin* was wrongly decided to the extent that it declined to grant fee relief for *pro forma* transfers and assignments of satellite authorizations despite the fact that such proceedings require a small fraction of the Commission resources necessary to process applications involving substantive transfers of control or assignments. See August Supplement at 3 n.1. However, the Commission need not revisit that issue here.

⁵ Single merger transactions often involve *pro forma* restructuring steps prior to closing. Yet applicants are not required to pay separate fees for approval of each step in the transaction when they are all included in the initial substantive transfer of control application. The only difference here is that GE Capital described the *pro forma* steps that were conditions precedent to its transfer of GE Americom and

Mr. John Riffer, Esq.

December 6, 2001

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For the foregoing reasons, and those presented in the Waiver Request and August Supplement, GE Capital respectfully requests a waiver and full or partial refund of the processing fees for the *pro forma* applications. Please address any questions regarding this matter to the undersigned.

Respectfully submitted,



Peter A. Rohrbach
Karis A. Hastings
Counsel for General Electric Capital
Corporation

Enclosures

ccs (w/o encl.):

Andrew Fishel
Mark Reger
Jennifer Gilsenan
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Claudette Pride

Columbia in a separate set of applications filed after, but during the pendency of, the overarching merger applications.
