

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

In the Matter of

Lockheed Martin Corporation COMSAT
Corporation, and COMSAT Digital
Teleport, Inc. Assignor,

And

Intelsat, Ltd., Intelsat (Bermuda), Ltd.,
Intelsat LLC, and Intelsat USA License Corp.
Assignee

Applications for Assignment of Sections 214
Authorizations and Earth Station Licenses and
Declaratory Ruling Requests

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IB DOCKET NO. 02-87

MOTION TO STRIKE UNAUTHORIZED RESPONSIVE PLEADING OF COMSAT

Litigation Recovery Trust (“LRT”) hereby submits this Motion to Strike Unauthorized Responsive Pleading of Comsat¹.

LRT recently received via certified mail a letter dated August 26, 2002 (“Lockheed Letter”) written by a staff lawyer purportedly in the employ of LMGT.² The letter offers several arguments in response to LRT’s recently filed Reply to Lockheed Opposition to Motion to Strike (“Reply”). The Lockheed Letter constitutes a surreply and is not authorized by the Commission’s rules. Further, the attorney has failed to file a motion seeking permission to submit the letter. LRT requests that the Lockheed Letter be dismissed without consideration. LRT further restates its request that Comsat and

¹ The letter which is on the letterhead of Lockheed Martin Global Telecommunications (“LMGT”) states that it is filed on behalf of Lockheed Martin Corporation, Comsat Corporation and Comsat Digital Teleport Inc., collectively referred to as “Comsat.”

² As stated in the original LRT Motion to Strike, it is LRT’s understanding, based on press releases of Lockheed Martin Corporation (“Lockheed”) and recent filings of Lockheed, that LMGT ceased functioning as an operating entity as of December 31, 2001 and has been dissolved. Also, based on the same information, Comsat Corporation continues to exist as an entity, although the use of its trade name has been abandoned.

Lockheed be sanctioned for their repeated and continuing violations of the Commission's rules and procedures, including the submission of the unauthorized Lockheed Letter.

1. Lockheed Letter Constitutes A Further Attempt to Conceal
Ex Parte And Other Violations

Without question, Comsat/Lockheed have not been candid with the Commission in responding to LRT's *ex parte* complaints. The Lockheed Letter constitutes the latest in this series of actions, reflecting Comsat/Lockheed's repeated lack of candor, in this and other proceedings. This aggravated conduct should result in the imposition of significant sanctions, including license disqualification³.

The Lockheed Letter offers a cursory, inartful attempt to explain away conduct, which constitutes intentional violation of the *ex parte* rules. Indeed, the LMGT attorney offers no defense for his past actions, which, on repeated occasions, have involved intentional failure to complete service of pleadings where the post office erroneously returned filings originally sent to LRT at its long standing New York City address.

On behalf of Comsat, the attorney states that "all of its actions were undertaken in good faith." There is no way that any attorney can defend the intentional failure to serve pleadings on an opponent as a "good faith" action. Yet, this is just what the attorney has done in this latest submission. This is a misrepresentation.

The position taken by Comsat/Lockheed counsel in earlier pleadings (now again confirmed in the Lockheed Letter) has fully admitted failing to serve LRT with pleadings, which were incorrectly returned by the Post Office. Consequently, the Commission must conclude that the companies sought to mislead the Commission about their failure to comply with the *ex parte* rules.

The Commission maintains a longstanding policy for administering character qualification issues raised with respect to license applications. Violations of the

³ See *Swan Creek Communications v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994); *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 and 457 U.S. 1119 (1982).

Communications Act, the Communications Satellite Act (“Satellite Act”) or the Commission's rules and regulations can be found to raise character concerns with respect to broadcast and non broadcast license applications, including providing the basis for disqualification of an applicant.

For the past six years, Comsat and Lockheed have been engaged in a continuing pattern of behavior involving the presentation of false and fraudulent information to the Commission in seeking the issuance and transfer or assignment of licenses, and as part of their continuing efforts to discredit LRT and its members, and seek the dismissal of its various petitions and other pleadings. The admitted *ex parte* violation addressed herein constitutes further evidence of this pattern of illegal conduct.

As established by LRT, Lockheed and Comsat have exhibited a continuing pattern of conduct, involving the submission of false and fraudulent information and the affirmative failure to disclose information directly related to *ex parte* violations and other rule violations. The Lockheed Letter again confirms that the companies have systematically followed a course of action involving the deliberate failure to provide LRT with service copies of pleadings and to misrepresent material facts concerning these violations. These actions by Lockheed and Comsat have involved direct and continuing violations of the Commission’s rules and regulations, including, in particular, 47 CFR § 1.65.

The totality of the evidence in this and other current proceedings and the deceit of Comsat and Lockheed must support the conclusion that these licensees lack the requisite character qualifications to deal truthfully with the Commission and to comply with its rules and policies.⁴

2. Counsel Has Misrepresented the Commission’s Past Actions With Respect to Ex Parte Allegations Against Comsat Management

⁴ See 1986 Character Policy Statement, 102 F.C.C. 2d at 1190-91; 1990 Character Policy Statement, 5 FCC Rcd at 3252; *Star Stations of Indiana, Inc.*, 51 F.C.C. 2d 95 (1975), *aff’d sub nom. Star Broadcasting, Inc. v. FCC*, 527 F.2d 853 (D.C. Cir. 1975), *cert. denied*, 425 U.S. 992 (1976).

Counsel states that the “Commission, through its Office of General Counsel, has repeatedly investigated LRT’s claims of ex parte violations by Comsat, and has found those claims to be utterly lacking in merit.” (Lockheed letter, p1, emphasis added) This statement misrepresents the facts.

It is true that LRT has on two separate (not “repeated”) occasions sought to bring information to the attention of the General Counsel in an effort to commence a full and detailed investigation and/or hearing related to the facts and circumstances surrounding Comsat’s past communications with the Commissioners and staff. What LRT has sought is a complete investigation of these activities. What the FCC General Counsel’s office has done to date is to dismiss the LRT request without undertaking a comprehensive investigation of the facts at issue. For Comsat to state that the General Counsel’s Office “has repeatedly investigated LRT’s claims of ex parte violations by Comsat” misstates and, more to the point, misrepresents the actual facts.

It is LRT’s position, based on information which has been made available to it, that prior to its acquisition by Lockheed, Comsat management regularly orchestrated ex parte communications with the Commission in an effort to secure various decisions in its favor based upon a set of arguments that the company’s operations were included within the ambit of national security interests and policies. Simply stated, Comsat’s protection and preservation was –in the view of the company and its agents- a matter of national priority, requiring its interests to prevail against LRT and others.

Clearly, there is no statutory basis for such arguments. Comsat was accorded certain privileges and immunities under the Communications Satellite Act. However, these protections would not and could not be found to include such a special status.

Furthermore, Comsat, as the former signatory representative of the United States, was a party to the Intelsat and Inmarsat treaties. These international agreements expressly precluded all signatories from utilizing the organizations or their facilities for certain defined purposes. Thus, Comsat was restricted by the terms of these treaties from seeking special protection by the Commission.

While Comsat lacked any legal basis for the referenced claims of special protected status this is exactly the information that has been made available to LRT. Further, this would provide a rationale for the rulings (or non rulings) which have been made favoring (and protecting) Comsat over the last seven years.

Indeed, LRT remains nonplused in seeking to understand the manner in which its own proceedings involving Comsat (and later its owner, Lockheed) have been administered by the Commission. In this connection, LRT noted the following history:

1. It took nearly five years (over two years for the initial ruling and two and a half years for issuing the reconsideration order) for the Commission to rule that Comsat had not violated the express provisions of 47 USC § 721(c)(8) when it purchased the BelCom Inc. stock without securing the prior ruling of the Commission finding that the purchases were (1) consistent with the purposes of the Satellite Act and (2) compatible with the public interest, convenience and necessity.
2. LRT's Request for Rule Making related to Comsat's operation of a business which distributed pornography to 1 million hotel rooms throughout the US in violation of the public interest has been on file and remains pending before the Commission since December 27, 1995 .⁵
3. The Commission to date has failed to cite and refer to the Enforcement Bureau Comsat's intentional submission of a series of FCC Form 312 applications which falsely stated that the company was not party to any criminal proceedings (dating to January 1999).
4. The Commission to date has failed to cite and refer to the Enforcement Bureau Comsat's intentional misrepresentation of the involvement of its senior managers in the operation of its Florida subsidiary which pleaded guilty to defrauding the US Navy and obstructing justice.
5. The Commission to date has failed to cite and refer to the Enforcement Bureau Comsat's intentional failure to inform the agency in a timely fashion of the execution of a criminal plea agreement by its Florida subsidiary for defrauding the US Navy and obstructing justice.

⁵ It is noted that while Comsat operated for a decade as the largest distributor of pornography in America, degrading women, endangering children and violating American family standards, this matter has remained "pending" before the Commission for six years. In comparison, Infinity Broadcasting Corporation's WNEW, according to recent press reports, is being "fast tracked" for possible license revocation for its broadcasting of a single, quite disgusting and highly objectionable radio report. This is clear evidence of the illegal double standard, which has constantly and consistently operated in Comsat's favor and against LRT.

6. The Commission to date has failed to cite and refer to the Enforcement Bureau Comsat/Lockheed's intentional failure to amend and update the pending applications of the companies for permits and authorizations to properly cross-reference the criminal plea agreement of Comsat's Florida subsidiary which pleaded guilty to defrauding the US Navy and obstructing justice.
7. The Commission has failed to explain why it delayed referring Comsat's admission that it had submitted false information to the agency, misrepresenting the licensee status of its Florida subsidiary, to a time which it computed as being beyond the statute of limitations.
8. The Commission has failed to revoke and rescind its series of admonitions against LRT for alleged harassment of Comsat without making an independent investigation and assessment of LRT's purposes and motivation as required by its applicable policy.
9. The Commission staff has failed to grant any of LRT's 28 individual subpoena requests seeking information from Comsat/Lockheed related to, among other things, use of BelCom for money laundering purposes; misuse of international telecommunications intercepts; misuse of communications facilities in violation international law; billing irregularities including failure to properly account and to misstate accounting for services and facilities; the operation and control by senior Comsat management of the Florida subsidiary convicted of defrauding the US Navy and obstructing justice, misuse of domestic and international communications facilities to transmit pornography (including child pornography); misuse of Comsat international facilities for private purposes.
10. The Commission to date has failed to cite Comsat/Lockheed and their attorneys for deliberate and repeated violations of ex parte rules.

The foregoing facts present stark and disquieting evidence of a series of actions that all have been decided by the Commission in Comsat's favor or, alternatively, have been disregarded, postponed or dismissed.

The only exception was the single referral to the Enforcement Bureau of the Comsat/Lockheed's admitted filing of false information with the Commission. Even this action was for all intents and purposes concealed in a misnumbered footnote of a ruling, issued without an accompanying press release during the middle of the past July 4th weekend.⁶ Comsat admitted filing the false information nearly 18 months ago, yet the Commission, rather than springing to action to sanction the company, chose to delay

⁶ This stands in contrast to the severe sanctions including multimillion dollar fine, recently issued against SBC Communications which was accused of but did not admit filing false information with the Commission.

action to the point that, according to its own computations, allowed the statute of limitations to run, removing the possibility of adopting a substantial fine and related penalty.

It is LRT's view that this history of administrative sanctions lost must be seen as evidence in support of its request for a comprehensive investigation and hearing into the operations of Comsat and its parent, Lockheed. This Comsat history dates to 1995 and largely predates the current Commission and staff. There clearly are documents, records, memoranda, minutes of meetings, which are available for review. This evidence should provide the basis for a detailed analysis of Comsat's past actions to determine appropriate sanctions.

The Commission has broad discretion in its choice of remedies and sanctions in enforcing licensee violations of its rules and policies.⁷

As previously explained, LRT maintains that the misconduct of Comsat/Lockheed in this case and related proceedings was extremely serious, even extending to egregious criminal conduct on the part of Comsat's Florida subsidiary, and repeated misrepresentations by Comsat/Lockheed, designed to minimize the effect of the related criminal grand jury investigation and conviction on their qualifications. Cumulatively, the evidence of misconduct should be found to warrant a conclusion that the Comsat/Lockheed lack the requisite character traits of truthfulness and reliability to retain their authorizations.

At the same time, there is no evidence mitigating the impact of misconduct by these two licensees. In fact, to the contrary, the *ex parte* matters at issue herein reflect additional aggravated rule violations, which continue to the present. Put as simply as it can be, the misconduct here was not isolated or restricted, but involved the continuing, intentional rule violations on the part of Comsat and Lockheed. It must be concluded that license revocation is appropriate in the circumstances of this case.

⁷ See *RKO General, Inc. v. FCC*, 670 F.2d at 237; *Leflore Broadcasting Co. v. FCC*, 636 F.2d at 463; *Lorain Journal Co. v. FCC*, 351 F.2d at 831.

Comsat/Lockheed must be sanctioned for their conduct in this proceeding, including the following:

1. All of their pleadings should be stricken and the matter referred to the Enforcement Bureau.
2. The attorney in question should be sanctioned.⁸

In addition, in view of the fact that this latest conduct is not isolated, but is part of a continuing and extensive pattern of rule violations, the Commission should adopt broad sanctions against both Comsat and Lockheed, including license revocation and dismissal of the pending assignment applications..

7. Conclusion

LRT has submitted evidence in this and other pending proceedings, establishing that Comsat and Lockheed have systematically and repeatedly violated the *ex parte* rules, sought, through misrepresentation and lack of candor, to conceal these and other violations, including the failure to disclose the criminal grand jury investigation and subsequent conviction of Comsat's Florida subsidiary, and committed other aggravated rule violations, which continue to the present.

The serious misconduct of Comsat and Lockheed having been determined to be pervasive and extensive, involving continuing, intentional rule violations on the part of said companies, LRT requests that the sanctions as outlined in this Reply be adopted by the Commission. In undertaking this assessment of the past actions of these licensees, it is appropriate, and necessary, for the Commission to take into account the fact that Comsat and Lockheed have fully admitted to and have been found guilty of submitting false information in the Comsat Merger proceeding.

Respectfully submitted,

/s/ William L. Whitely

William L. Whitely
Trustee

⁸ LRT advocates that the counsel be suspended from practicing before the Commission for an extended period of time, at least 24 months.

August 7, 2002

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1. Lockheed Letter Constitutes Admission Against Interest,
Proving Lockheed's Violation of Ex Parte Rules

Lockheed's letter, while masquerading as an opposition against LRT's filing, is in actuality an admission against interest on the part of Lockheed/Comsat, as it confirms a pattern of the companies' violations of the *ex parte* rules.

In the second paragraph of the letter, counsel attempts to offer an explanation of Lockheed/Comsat's supposed good faith compliance with the service rules. Counsel states as follows:

In fact, [Lockheed's] letter was mailed on June 27 [2002] to LRT at the address used throughout this proceeding: 515 Madison Avenue, New York, NY 1022. Several days later, the letter was returned to Comsat bearing a typed sticker reading "WRONG ADDRESS RETURN TO SENDER." See attachment hereto. While Comsat does not know the origin of that sticker, it does not appear to have been affixed by the Post Office. LMG T Letter, ¶ 2.

To say the least, LRT finds counsel's narrative to be incredible. LRT and the Commission are expected to believe that some unknown person at some unknown location in some unknown city is carefully reproducing labels to cover addresses on letters, and miraculously returning the errant envelopes to Comsat without a return Post Office cancellation stamp. This certainly constitutes an immaculate reception on the part of Comsat/Lockheed. Further, the envelope in question bears a June 27 postage meter stamp (one would assume originating from the Lockheed/Comsat mailroom), but there is no cancellation stamp from the US Post Office.⁹

Even accepting counsel's explanation as plausible, the fact remains that the letter submission, once supposedly returned to Comsat/Lockheed in Bethesda, was filed away in some location until it was copied and submitted as an Exhibit in this proceeding. Such conduct on the part of Lockheed and its counsel is unacceptable, and violative of the service rules. Further, as established by evidence heretofore submitted in this proceeding, this sharpest of practices of Lockheed is not the first violation of the *ex parte* rules to which LRT has been subjected.

⁹ Admittedly not all metered mail is canceled by the Post Office. However, to have the Comsat envelop pass through the system from Bethesda to New York and return without bearing any marking from the Post Office must be regarded as quite unusual and suspect.

As recounted in the Motion to Strike in the Lockheed-Comsat Merger Proceeding,¹⁰ Lockheed/Comsat, represented by the same staff attorney who submitted the LMGT Letter herein, offered a similar “returned envelope” cover scenario in an attempt to explain away their failure to serve LRT with certain other pleadings.

In both proceedings, one is presented with testimony by counsel that he supposedly mailed pleadings to LRT, found them returned by the Post Office, and then filed the returned documents until it became necessary to offer the envelopes to respond to allegations of participating in *ex parte* communications. In each case, counsel decided to turn what is described as a supposed ministerial error (caused by the Post Office in one case and an unknown power in the instant situation) into a tactical *ex parte* advantage for Lockheed/Comsat. Counsel sought to orchestrate the filing of these *ex parte* communications until the facts were discovered by LRT. Then, to disguise the situation, Lockheed offers the failure of the Post Office or the interference by some unknown third party as its cover story or contrived excuse. And in each proceeding, to this day, Lockheed and Comsat have failed to supply LRT with a copy of Lockheed’s *ex parte* communications.

¹⁰ Lockheed-Comsat Merger, FCC File Nos. SAT-T/C-20000323-00078, et al.