

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

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

and

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

Applications for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling

IB Docket No. 02-87

OPPOSITION TO PETITIONS FOR RECONSIDERATION

Lockheed Martin Corporation (“Lockheed Martin”), COMSAT Corporation, and COMSAT Digital Teleport, Inc. (collectively “COMSAT”), together with Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp (collectively “Intelsat”) (Lockheed Martin, COMSAT and Intelsat collectively the “Applicants”), by their attorneys and pursuant to Section 1.106(g) of the rules of the Federal Communications Commission (“FCC” or “Commission”), hereby oppose the Petition for Partial Reconsideration filed by PanAmSat Corporation (“PanAmSat”) and the Petition for Reconsideration filed by the Litigation Recovery Trust (“LRT”) in the above-referenced proceeding.¹

¹ 47 C.F.R. §1.106(g). Pursuant to a Motion to Extend Time jointly filed by the Applicants, the FCC extended the filing deadline for this Opposition to December 13, 2002. *In*

I. THE FCC SHOULD DISMISS OR DENY PANAMSAT'S REQUEST FOR ADDITIONAL REGULATION OF INTELSAT'S NON-COMMON CARRIER SERVICE ON THIN ROUTES

The Commission should dismiss PanAmSat's petition for reconsideration on procedural grounds, for it did not participate earlier in the proceeding and provides no legitimate justification for doing so now. Moreover, even if the Commission were to consider PanAmSat's attempt to raise a substantive argument, the contentions concerning the need for additional dominant carrier regulation are not simply erroneous, but downright odd. In objecting to Intelsat's ability to offer both private carriage and common carriage services on the so-called "thin routes"² once served by COMSAT, PanAmSat's actual concern appears to be that Intelsat will offer more attractive service options on those routes to COMSAT's old customers. While this development may be contrary to PanAmSat's interest as a business rival, it is preposterous to contend that offering customers more options for tailor-made services at attractive prices will impose any harm to the public interest.

PanAmSat claims that it did not participate in earlier stages of this proceeding because it did not know that the Commission would "eliminate dominant carrier regulation for switched

(Continued . . .)

the Matter of Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc. Assignors and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp., Assignees Applications for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling, Motion to Extend Time (filed Nov. 27, 2002; granted by stamp Nov. 27, 2002); PanAmSat Petition for Partial Reconsideration, IB Docket No. 02-87 (filed Nov. 25, 2002) ("PanAmSat Petition"); Litigation Recovery Trust Petition for Reconsideration, IB Docket No. 02-87 (filed Nov. 24, 2002) ("LRT Petition").

² "Thin routes" are routes where no submarine cable was available four years ago and for which COMSAT generally was the only provider of satellite services. *COMSAT Corporation; Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, 13 FCC Rcd 14083, 14100-01 (1998) (Order and Notice of Proposed Rulemaking) ("*COMSAT Non-Dominance Order*").

voice, private line, and occasional use video services to non-competitive markets.”³ As a factual matter, the Commission did not eliminate such regulation. The *Order* requires Intelsat USA License Corp. to be “regulated as a dominant international carrier on thin routes in its provision of capacity for switched-voice and private line services, subject to the alternative rate regulation set out in the *Comsat Alternative Rate Regulation Order*....”⁴ Intelsat USA License Corp. already has adopted COMSAT’s tariff, demonstrating its compliance with those obligations.⁵ Thus, contrary to PanAmSat’s contention, Intelsat in fact is “subject post-closing to regulation that is comparable to the dominant carrier regulation that [formerly] applie[d] to Comsat.”⁶ Accordingly, PanAmSat fails to satisfy its burden under Section 1.106(b)(1) of the Commission’s rules to show “good reason” why it should be permitted to participate belatedly here.

Moreover, PanAmSat’s professed concern about private carriage services is not even germane to this proceeding. Intelsat already has authority to provide private carriage service on

³ PanAmSat Petition at 2, n.2. The Applicants note that the Commission’s order in this proceeding addressed only switched and private line services on thin routes; the FCC authorized COMSAT’s discontinuance of occasional use video last year. *In the Matter of Section 63.19 Application of COMSAT Corporation; For Authority under Section 214 of the Communications Act to Discontinue the Provision of Occasional-Use Television, Occasional-Use IBS Services, and Part-Time IBS Services*, 16 FCC Rcd 22396 (2001) (Memorandum Opinion and Order).

⁴ *In the Matter of Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc. Assignors and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA Sales Corp., Assignees Applications for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling*, Order and Authorization, IB Docket No. 02-87, ¶ 58 (rel. Oct. 25, 2002) (“*Order*”); see also *Comsat Corporation Policies and Rules for Alternative Incentive Based Regulation of Comsat Corporation*, 14 FCC Rcd 3065 (1999) (Report and Order) (“*Alternative Rate Regulation Order*”).

⁵ Letter from David B. Meltzer, Director, Intelsat USA License Corp. to Marlene H. Dortch, Secretary, FCC (filed Nov. 25, 2002).

⁶ PanAmSat Petition at 3. The transaction at issue in this proceeding closed on Monday, Nov. 25, 2002.

thin routes, and the *Order* does nothing to alter that fact. The Commission authorized Intelsat to provide such service—on both thin and thick routes—three years ago in the *Direct Access Order*.⁷ Moreover, the Commission reaffirmed this authority in the *Intelsat Privatization Order*, which found Intelsat’s privatization consistent with the requirements of the Open-Market Reorganization for the Betterment of International Telecommunications Act (“ORBIT Act”).⁸ The *Order* merely affirms—for a third time—an outcome that the Commission previously has endorsed.

PanAmSat struggles to contend that Intelsat’s authority to offer both private carriage and common carriage somehow would “eviscerate protections” that prevent Intelsat from abusing any alleged market power on thin routes. This argument is illogical. Under the *Order*, Intelsat has taken on COMSAT’s common carrier obligations while also continuing to offer customers attractive service options under private carriage arrangements. Customers seeking switched voice or private line services on thin routes may also rely upon another existing safeguard: the terms of the standard Intelsat Distribution Agreement or Wholesale Customer Agreement, both of which provide nondiscriminatory pricing protections. Furthermore, as the Commission has noted, many competitors in the marketplace also offer international capacity for such services⁹—

⁷ *Direct Access to the INTELSAT System*, 14 FCC Rcd 15703, 15704 (1999) (Report and Order) (“*Direct Access Order*”). The *Direct Access Order* authorized customers to take service directly from Intelsat’s predecessor entity, the intergovernmental organization (“IGO”) known as INTELSAT, which the IGO at that time offered only on a private carrier basis. Nothing in the *Direct Access Order* required that the offerings be made subject to common carriage obligations.

⁸ *Applications of Intelsat LLC For Authority to Operate, and to Further Construct Launch and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, 16 FCC Rcd 12280 (2001) (Memorandum Opinion Order and Authorization) (“*Intelsat Privatization Order*”). This decision authorized Intelsat’s continued provision of services, including those available on thin routes. In so doing, the Commission did not impose any common carriage obligations on Intelsat.

⁹ *Order*, ¶ 20.

PanAmSat among them. There is simply no public interest need for the additional regulation that PanAmSat urges the Commission to impose.¹⁰

At bottom, PanAmSat's real concern stems from an obvious result of the transaction itself—former COMSAT customers are becoming direct Intelsat customers—and those customers may enjoy the new flexibility to negotiate individually with Intelsat for services. As noted above, however, COMSAT's customers have had this ability since 1999, when the Commission allowed direct access to the Intelsat system. Ironically, the shift of customers from COMSAT to Intelsat via direct access was what PanAmSat itself advocated for years.¹¹ Now that it is occurring, PanAmSat apparently fears the competitive impact of a newly streamlined Intelsat in the marketplace. These fears are hardly the basis for concluding that the public interest is disserved by the *Order*.

In sum, the Commission correctly found, and should reaffirm on reconsideration, that additional regulation of Intelsat's common carrier or private carrier service on thin routes is not required to protect consumers.

II. THE FCC SHOULD DENY LRT'S MANY UNFOUNDED CONTENTIONS, AS THEY LACK ANY NEW FACTS TO SUPPORT ARGUMENTS THAT THE AGENCY ALREADY HAS REJECTED

The internally repetitive "errors" recited by Litigation Recovery Trust ("LRT") in its Petition for Reconsideration consist almost entirely of arguments that the FCC already has considered and flatly rejected. LRT's Petition raises only one novel argument, which—like the

¹⁰ In addition, PanAmSat's suggestion that the Commission cannot adequately "monitor" the thin-route market makes no sense; moreover, this transaction in no way alters the FCC's ability to carry out its approach of either – or alternative rate regulation. The FCC can continue to monitor Intelsat USA License Corp. under the *Alternative Rate Regulation* regime.

¹¹ *Direct Access Order*, 14 FCC Rcd at 15714 (noting PanAmSat's support for Level 3 direct access "in all markets and all routes").

others—lacks substantive merit. Accordingly, the Commission should summarily reject all of LRT’s contentions.

The many issues raised by LRT that the FCC already has considered and rejected are as follows:

- **Qualification of assignor**—The Commission repeatedly has found no merit to LRT’s contentions that COMSAT is somehow unqualified to assign its FCC licenses.¹² LRT’s claims in this regard are an almost verbatim account of allegations it made and which the Commission rejected in several recent proceedings involving COMSAT.¹³ In particular, LRT continues to raise the argument that the “non-final” status of the *Lockheed Martin-COMSAT Order* should prohibit the instant transaction from going forward, despite the fact that the Commission has denied in all respects and with prejudice LRT’s reconsideration petition in that proceeding.¹⁴ As the FCC noted in the *Order*, “the fact that LRT has filed yet another pleading in [the Lockheed Martin-COMSAT proceeding] does not obviate the finality of the Commission’s [reconsideration order] or [the agency’s] reliance upon it in this proceeding.”¹⁵
- **Foreign ownership**—The Commission already has considered and properly rejected LRT’s arguments that the proposed transaction somehow violates the foreign ownership policies.¹⁶ Specifically, the FCC concluded that “LRT [had] provide[d] no

¹² Compare LRT Petition at 6-8 (alleged “Error 5”) with *Order*, ¶ 14; see also, e.g., *Lockheed Martin Global Communications, et al., Assignors, and Telenor Satellite Mobile Services, Inc., et al., Assignees, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses*, 16 FCC Rcd 22897, 22905 (2001) (Order and Authorization) (“*Telenor-COMSAT Order*”); *stay denied*, 17 FCC Rcd 1552 (2002) (“*Telenor-COMSAT Stay Denial Order*”); recon. denied, 17 FCC Rcd 14030 (2002) (“*Telenor-COMSAT Reconsideration Order*”).

¹³ See, e.g., Provisional Petition of Litigation Recovery Trust to Deny and Petition of Litigation Recovery Trust for Protective Orders, File Nos. SES-ASG-20010504-00896 *et al.* (filed June 22, 2001) (Telenor-COMSAT transaction).

¹⁴ See *Lockheed Martin Corporation, COMSAT Government Systems, LLC, and COMSAT Corporation, Applications for Transfer of Control of COMSAT Corporation and Its Subsidiaries*, 15 FCC Rcd 22910 (2000) (Order and Authorization) (“*Lockheed Martin-COMSAT Order*”); 17 FCC Rcd 13160 (2002) (Order on Reconsideration) (“*Lockheed Martin-COMSAT Reconsideration Order*”).

¹⁵ *Order* at n.47.

¹⁶ Compare LRT Petition at 4, 13-16 (alleged “Error 3” and first of two alleged “Error 9”) with *Order*, ¶¶ 41-46. Moreover, the contentions that LRT’s Petition offers with respect to foreign ownership are virtually identical to—and even cross-reference—those made and denied in the Telenor-COMSAT proceeding. *COMSAT-Telenor Reconsideration Order*, 17 FCC Rcd 14030, ¶ 5. In addition, LRT’s alleged “Error 3”—which contends that the *Order* “constitutes a direct violation” of Section 310(b) of the Act because indirect, foreign ownership in Intelsat

persuasive evidence in this case to rebut the presumption that market entry by WTO Member investors, including foreign government stakeholders, raises no competitive concerns.”¹⁷ LRT’s reconsideration petition does not merit any further examination of this issue. Furthermore, the fact that the ownership structure of Intelsat may change in the future has no bearing on the outcome of this proceeding. The agency certainly is aware that the ownership structures of regulated entities are not set in stone—and, indeed, the *Order* reflects that understanding.¹⁸

- **Compliance with the ORBIT Act**—The Commission has concluded on more than one occasion that the sale by Lockheed Martin of one of COMSAT’s former jurisdictional businesses does not violate the ORBIT Act.¹⁹ LRT offers no new facts meriting reconsideration of the agency’s resolution of this issue.

(Continued . . .)

surpasses the 25% benchmark—is answered later in LRT’s Petition, where it acknowledges that the “Commission has been accorded discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.” *Compare* LRT Petition at 4 *with id.* at 13.

¹⁷ *Order*, ¶ 42.

¹⁸ The *Order* provides for certain additional foreign ownership changes without prior Commission approval. See *Order*, ¶ 43 (“Although an individual stakeholder with foreign government ownership may increase its interest in Intelsat, Ltd. in the context of [the initial public] offering, the specific foreign ownership ruling we adopt in [the Intelsat-COMSAT assignment] order prohibits any foreign person or entity, including a foreign government, from acquiring an indirect interest in Intelsat LLC that exceeds twenty-five percent without prior Commission approval.”)

In a similar vein, the possibility raised by LRT that Lockheed Martin may sell its current holdings in Intelsat in the future is not relevant to this matter at all. In any event, future ownership changes as a result of the planned initial public offering of Intelsat’s shares are inevitable, and may well increase the overall percentage of U.S. ownership in the company.

¹⁹ *Compare* LRT Petition at 9-11 (alleged “Error 7”) *with Order*, ¶¶ 25-28; *see also Telenor-COMSAT Order*, 16 FCC Rcd at 22904 (“We do not agree with LRT that the ORBIT Act, or the expectations of Congress in enacting the ORBIT Act, intended that the government have an ongoing interest, control, or involvement in Lockheed Martin Corporation’s management of COMSAT Corporation’s assets.”); *see also id.* at 22905; *Telenor-COMSAT Reconsideration Order*, 17 FCC Rcd 14030, ¶ 9. Specifically, in its order on reconsideration, the FCC rejected LRT’s argument that the Telenor-COMSAT transaction violated the ORBIT Act because it would allow Telenor, a Norwegian company, to increase its ownership percentage in the privatized Inmarsat. *See id.*, ¶ 3. In rejecting LRT’s analogous argument here, the Commission followed established precedent. *See also, e.g., Voicestream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310 of the Communications Act*, 16 FCC Rcd 9779 (2001) (Memorandum Opinion and Order) (“*Deutsche Telekom/Voicestream Order*”).

- **Possible future transactions**—The FCC has correctly concluded that speculation regarding Intelsat’s possible interest in the sale of Eutelsat, S.A., a European satellite entity, has no bearing on this proceeding.²⁰ LRT’s repetition of its arguments to the contrary—which originally were set forth in its request for an additional round of comments in the underlying proceeding—presents no additional facts warranting reconsideration of this issue.²¹
- **National security issues**—The FCC correctly and summarily rejected LRT’s request to establish a special task force to assess whether the Applications raise national security implications.²² As the *Order* recites, the appropriate expert agencies reviewed the transaction and lodged no objections. Because LRT provides no additional support for its renewed request, the Commission need not consider it again.
- **Calls for various conditions**—LRT contends that the Commission should impose several conditions on the grant that the FCC already has considered and rejected. These include the requests made earlier by AT&T, WorldCom, and Sprint to impose a series of conditions on Intelsat post-transaction.²³ The agency denied each of these demands in the *Order*,²⁴ the original commenters have not raised them again, and LRT provides no additional facts that would require the Commission to reconsider them now. Likewise, the FCC already has considered and denied LRT’s request to require the parties to make the Intelsat-COMSAT acquisition agreement publicly available.²⁵ LRT also resurrects its proposal that Lockheed Martin be required to use the proceeds from the instant transaction to fund some type of digital conversion fund.²⁶ The agency has properly rejected this notion on several occasions,²⁷ and LRT provides nothing new requiring reconsideration now.

The only one of LRT’s allegations of error that the Commission has not already considered and rejected is the specious contention that the *Order* is invalid because “Lockheed

²⁰ Compare LRT Petition at 2-3, 8-9 (alleged “Error 1” and “Error 6”) with *Order*, ¶ 52.

²¹ LRT Motion to Postpone Further Action Pending Solicitation of New Round of Comments, IB Docket No. 02-87 (filed Sept. 23, 2002).

²² Compare LRT Petition at 16-17 (second of two alleged “Error 9”) with *Order*, ¶ 51.

²³ See LRT Petition at 11-13 (alleged “Error 8”).

²⁴ See *Order*, ¶¶ 17-20, 23, 28, 32-34.

²⁵ Compare LRT Petition at 5-6 (alleged “Error 4”) with *Order*, ¶ 52.

²⁶ LRT Petition at 18-20 (alleged “Error 10”).

²⁷ See *Order*, ¶ 52.

Martin Global Telecommunications, LTD. (LMGT) was closed in December 2001.”²⁸ This allegation is both factually wrong and procedurally irrelevant. In December 2001, Lockheed Martin announced that it had decided to exit the global telecommunications services business; the correct name of the company engaged in this business is Lockheed Martin Global Telecommunications, LLC (“LMGT”).²⁹ LMGT was not closed in December 2001 as a result of this decision, however, and in fact continues to exist as a legal entity today. LRT claims that LMGT is the “ultimate party of interest” in the transaction, apparently based on the Applicants’ description of LMGT as one in a chain of wholly owned subsidiaries through which Lockheed Martin controlled the licenses and authorizations at issue.³⁰ LRT fails to note, however, that the Application in this proceeding plainly pointed out the planned dissolution of certain of LMGT’s businesses and investments.³¹ Accordingly, neither the caption on the Application narrative nor the caption on the Commission’s *Order* refer to LMGT. There is no procedural defect in this regard, and the FCC therefore should reject LRT’s contention that the intentional omission somehow invalidates the *Order*.

²⁸ See LRT Petition at 3-4 (alleged “Error 2”).

²⁹ See Lockheed Martin Press Announcement, (Dec. 7, 2001), *available at* http://www.lockheedmartin.com/news/articles/120701_1.html (last visited Dec. 12, 2002). There never was an entity named “Lockheed Martin Global Telecommunications, LTD.” as LRT suggests. See LRT Petition at 4 & n.8.

³⁰ See Application For Consent to Assignments Narrative at 4 (filed Apr. 5, 2002) (“Application Narrative”); *Order* at n.23.

³¹ See Application Narrative at n.5.

Certificate of Service

I, Christopher E. Ryan, a legal assistant at Wiley Rein & Fielding LLP, hereby certify that on December 13, 2002, I caused a copy of the foregoing "Opposition" to be mailed via first-class postage prepaid mail to the following:

William L. Whitely
Trustee
Litigation Recovery Trust
515 Madison Avenue
Suite 2306
New York, NY 10022-5403

Henry Goldberg
Joseph A. Godles
Brita Dagmar Strandberg
Goldberg, Godles Weiner & Wright
1229 19th Street, N.W.
Washington, DC 20036
Attorneys for PanAmSat

Alfred M. Mamlet
Maury D. Shenk
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036

Kerry E. Murray
Rick S. Whitt
WorldCom, Inc.
1133 19th Street, N.W.
Washington, DC 20036

H. Richard Juhnke
Kent Nakamura
Sprint Communications Company L.P.
401 9th Street, N.W.
Fourth Floor
Washington, DC 20004

Marc C. Rosenblum
Lawrence J. Lafaro
James J. R. Talbot
AT&T CORP.
Room 1121M1
2195 N. Maple Avenue
Basking Ridge, NJ 07920

Scott H. Lyon
Assistant General Counsel
Verestar, Inc.
3040 Williams Drive, Suite 600
Fairfax, VA 22031



Christopher E. Ryan