

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

In the Matter of	)	
	)	
Lockheed Martin Corporation,	)	
COMSAT Corporation, and	)	IB Docket No. 02-87
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	)	

**PETITION FOR RECONSIDERATION**

I. INTRODUCTION

Litigation Recovery Trust (“Petitioner” or “LRT”), on behalf of its members and its associated entities<sup>1</sup>, hereby submits the instant Petition For Reconsideration of the Order and Authorization (“Intelsat Order”) in this proceeding (referred to herein as the “Comsat Intelsat Proceeding”) granting the applications of Lockheed Martin Corporation (“Lockheed ”), Comsat Corporation and Comsat Digital Teleport, Inc. (collectively, “Comsat” and, with Lockheed, “Assignors”), and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp. (collectively, “Intelsat” or “Assignees” and, together with Assignors, “Applicants”) to assign common carrier and non-common carrier earth station licenses, private land mobile radio (“PLMR”) licenses, and international section 214 authorizations from Assignors to Intelsat.

The Commission has concluded that, pursuant to its review under sections 214(a) and 310(d) of the Communications Act of 1934, as amended (the “Communications Act” or “Act”),<sup>2</sup> approval of the Applications will serve the public interest, convenience, and necessity. In addition, subject

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<sup>1</sup> Litigation Recovery Trust represents the rights and claims of certain individuals, and includes certain entities. The basic LRT claims relate to a series of business disputes with Comsat Corporation (“Comsat”) dating to 1995. Since that time, LRT has monitored and reviewed the operations of Comsat on a continuing basis, and has periodically sought the intervention of the Commission with respect to perceived statutory and regulatory violations and compliance issues. The instant petition is part of LRT’s continuing monitoring and assessment program.

<sup>2</sup> The Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* .

to the limitations specified in the Intelsat Order, the Commission has found that the public interest would not be served by prohibiting the proposed indirect foreign ownership of Intelsat LLC in excess of the twenty-five percent benchmark set by section 310(b)(4) of the Act.<sup>3</sup>

Petitioner has previously participated in this proceeding. Further, LRT is a party to several proceedings currently pending before the Commission and the US Court of Appeals for the Second Circuit involving Comsat<sup>4</sup> and its parent, Lockheed.

Based on the information presented herein, Petitioner seeks the revocation of the grant of the subject Applications or, in the alternative, the grant of the Applications subject to strict conditions as defined in the proposed protective orders heretofore submitted by LRT.

LRT restates its request that the Commission adopt necessary protective orders with respect to the future operations of Comsat licenses and assets by Intelsat, and the determination, through investigation and evidentiary hearing, of the liability, if any, of Comsat and Lockheed with respect to the filing of the subject Applications.

## 2. GROUNDS SUPPORTING RECONSIDERATION

LRT respectfully asks that the Commission reconsider its ruling in this proceeding so as to correct the series of errors outlined herein and impose stringent penalties against Comsat, its parent, Lockheed, and their officers and directors.

### Error 1. Failure to Properly Review Expansion Plans of Assignee

The Commission in its Order identifies Intelsat as the privatized successor to the intergovernmental organization INTELSAT and a company incorporated under the laws of Bermuda, which owns and operates a global satellite system providing space segment capacity for communications services. As a “successor entity” to INTELSAT, Intelsat, pursuant to terms of the ORBIT Act, is scheduled to conduct an initial public offering (“IPO”), to dilute substantially

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<sup>3</sup> 47 U.S.C. § 310(b)(4).

<sup>4</sup> Comsat is incorporated under the laws of the District of Columbia, with headquarters in Bethesda, Maryland pursuant to the Communications Satellite Act of 1962 (Satellite Act). Pursuant to the Satellite Act, Comsat’s activities from its inception were overseen or regulated by the Congress, the President of the United States, the Department of State, Department of Commerce, the Commission and the Attorney General of the United States. Commission.

the ownership by former INTELSAT Signatories.<sup>5</sup>

LRT filed a motion to suspend action on the Applications, pending solicitation of additional comments.<sup>6</sup> LRT based its request upon a series of press reports that Intelsat, Ltd. is in the process of acquiring Eutelsat, S.A., a major satellite company in Europe, via unfriendly takeover. The Commission denied LRT's motion, finding that, " Press reports speculating on possible future acquisitions by Intelsat, Ltd. are not a basis to delay action in this proceeding." LRT finds this ruling to be in error.

The information presented to the Commission by LRT was not refuted by Intelsat. Accordingly, the Commission has the clear obligation to conduct further inquiry into the facts and documentary evidence presented on the record by LRT. Clearly, the Commission has been put on notice that the acquisition of Comsat assets and licenses are part of a general expansion plan that Intelsat is presently pursuing. This plan appears to be designed to facilitate a wholesale expansion of Intelsat's operations, in all likelihood, making it the dominant satellite services provider in all major world markets, including the United States.

Without question, the Commission has the primary responsibility to review all aspects of Intelsat's current and planned operations to determine the potential impact on competing carriers within the U.S. A combined Intelsat/Comsat/Eutelsat entity is far different in size, scope and economic power from the combined Intelsat/Comsat, which is the Applicant herein.

It is critical that the Commission ascertain the facts and circumstances related to Intelsat's plans to expand its operations through other acquisitions, including the possible merger with Eutelsat. The failure of the Commission to undertake such an inquiry is a violation of its delegated authority.

This error also renders its Intelsat Order defective as the Commission has failed to make the necessary and properly informed ruling concerning the ultimate competitive effects, which the proposed transaction will have upon the competing licensees under its jurisdiction.

Error 2 : Misidentification of Ultimate Party in Interest.

The Commission has identified the Assignors as follows:

Comsat, incorporated in the District of Columbia, is a wholly-owned subsidiary of

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<sup>5</sup> See section 621, Open-Market Reorganization for the Betterment of International Telecommunications Act, Public Law 106-180 (the "ORBIT Act"), 47 U.S.C. § 763; *Intelsat LLC, Request for Extension of Time Under Section 621(5) of the ORBIT Act*, Memorandum Opinion and Order, File No. SAT-MS-20010822-00075, FCC 01-288, 16 FCC Rcd 18185 (2001). The U.S. Senate and House have passed S.2810, which would extend the deadline from December 31, 2002 to December 31, 2003.

<sup>6</sup> Motion to Postpone Further Action Pending Solicitation of New Round of Comments (filed Sept. 23, 2002).

Lockheed Martin Global Telecommunications LLC, a Delaware limited liability company that in turn is a wholly-owned subsidiary of Lockheed Martin, a publicly-traded U.S. company incorporated in Maryland.<sup>7</sup>

Lockheed has issued public notices to the effect that the former Comsat “parent” organization, Lockheed Martin Global Telecommunications, LTD. (LMGT) was closed in December 2001, upon action of the Board of Directors of Lockheed.<sup>8</sup> The Commission apparently was not informed of this corporate action by the Applicants. The Commission has granted the Applications submitted by a non-existent company. As a result of this error, the assignments as authorized in the Intelsat Order are invalid on their face.

### Error 3. Failure To Seek Guidance of Congress Before Authorizing Assignment of US Licenses to Foreign Controlled Company

In its Order, the Commission seeks to authorize the assignment of Comsat licenses to various Intelsat companies.<sup>9</sup>

As outlined in detail in prior pleadings in this proceeding by LRT, the Congress is on record that it expects that the Commission will not permit the assignment of US licenses to companies where more than 25% of its equity is owned by foreign interests consistent with § 310 (b) of the Communications Act (47 USC § 151 et seq.)<sup>10</sup>. The Commission in its Order proposes to violate the 25% benchmark without consulting Congress. This action constitutes a direct violation of the Commission’s delegated authority, voiding the Order.

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<sup>7</sup> See Petition for Declaratory Ruling ; International 214 Application and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act, Order and Authorization, FCC 01-369, 16 FCC Rcd 22897 (2001), *erratum*, DA 02-266, 17 FCC Rcd 2147 (IB 2002) (“Comsat-Telenor Order”), *recon. denied*, Order on Reconsideration, FCC 02-207 (rel. July 12, 2002) (“Comsat-Telenor Reconsideration Order”).

<sup>8</sup> See Lockheed Press Announcement, December 7, 2001: [http://www.lockheedmartin.com/news/articles/120701\\_1.html](http://www.lockheedmartin.com/news/articles/120701_1.html)

<sup>9</sup> See Applications .

<sup>10</sup> The last Congress considered the matter of ownership of US telecommunications companies by foreign governments. These complex issues were addressed by the Subcommittee on Telecommunications Trade & Consumer Protection of the House Commerce Committee in hearings on Foreign Government Ownership of American Telecommunications Companies on September 7, 2000. Chairman Tom Bliley (R-Va) observed as follows: The process of full privatization is taking far too long and the various bills pending in Congress indicate that our patience is running out. The time has come for governments to get out of the telecom services business. Congressman Tom Bliley, Opening Statement, September 7, 2000, [http://com-notes.house.gov/ccheat/hearings106.nsf/Hearing\\_Expand?OpenView&StartKey=6C4FBE39CAE97C9 C8525694D006F91C9](http://com-notes.house.gov/ccheat/hearings106.nsf/Hearing_Expand?OpenView&StartKey=6C4FBE39CAE97C9 C8525694D006F91C9), emphasis added.

Error 4: The Commission Failed to Make Proper Assessment to Determine  
Whether the Proposed Assignments Are in the Public Interest

Applicants represented that, through the proposed transaction, Intelsat would acquire the same operational capabilities as its facilities-based rivals, which would have the effect of accelerating Intelsat's development as a competitor with the ability to market a full range of communications services tailored to customer needs.

In considering the Applications, the Commission is required to determine, pursuant to section 214(a) and section 310(d) of the Act, whether the proposed assignments will serve the public interest.<sup>11</sup>

At the outset of this proceeding, LRT requested that the Commission (1) require the Applicants to submit a copy of the operative transaction documents for its review and (2) to place the said documents on public file<sup>12</sup>. The Commission failed to undertake the actions as requested by LRT.<sup>13</sup>

The Commission has issued an Order, which, by its own criteria, supposedly addresses all primary issues concerning competitive impact of the transaction. However, it has undertaken this action without any direct knowledge of the fundamental sale and transfer documents upon which the transaction is based. This failure represents a fatal error in executing the Commission's delegated responsibilities.

The Commission cannot be expected to understand the true purposes and objectives of the parties to the transaction in question without reviewing the transactional documents. Even more to the point, the Commission's competition assessment responsibilities also extend to competing licensees and other interested parties. These interested individuals and entities must be given the opportunity to review the transactional documents to determine whether any elements are anti-competitive or in any other way violate to objectives and goals of federal communications policies as set forth in applicable statutes and Commission rules and regulations.

The combined failure of the Commission to review the transaction documents and to allow interested parties a similar right constitutes a violation of the Commission's delegated responsibilities and renders its action in issuing the Order void. The Commission is requested to revoke the Intelsat Order, secure the transactional documents from the parties and place them

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<sup>11</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>12</sup> See LRT Petition

<sup>13</sup> See Intelsat Order, ¶ 52

on the FCC Internet site reserved for the transaction, and, after appropriate time for review, solicit additional comments from all interested parties. Only after following such a procedure will the Commission be in a proper position to consider the competitive impact of the proposed assignment of Comsat licenses.

Error 5: The Commission Disregarded Evidence Central to  
Finding Comsat Unqualified to Hold a Communications License

As a threshold matter, the Commission is required to determine whether the Applicants are qualified to hold and assign licenses under section 310(d) of the Act and Commission rules. In making this determination, the Commission has stated that it does not “as a general rule, re-evaluate the qualifications of the assignors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.”<sup>14</sup>

In its filings herein, LRT alleged that the Applications were defective for failing to disclose information critical to assessing the Assignors’ qualifications to continue as Commission licensees. In issuing its Order, the Commission noted as follows:

In particular, LRT argued that Assignors failed to disclose that Lockheed Martin doesn’t possess a final grant of authority for the Comsat licenses because LRT filed a petition for reconsideration of the Commission’s July 31, 2000 grant, in the *Comsat-Lockheed Order*, of the transfer of control of Comsat Corporation to Lockheed Martin and thus the transfer of control is “non final.”<sup>15</sup> In July 2002, however, the Commission dispensed with this and related arguments in a series of orders denying LRT’s various petitions seeking reconsideration of Commission decisions granting authority to Lockheed Martin and Comsat.<sup>16</sup> In particular, in the *Comsat-Lockheed Reconsideration Order* [“Reconsideration Order”], the Commission denied with prejudice and in all respects LRT’s petition for reconsideration of the *Comsat-Lockheed Order*.<sup>17</sup>

In reaching this conclusion, the Commission has clearly overlooked and/or disregarded the central issues raised by LRT. It is true that LRT did cite Comsat’s failure to disclose the non-final status of its merger application as a deliberate violation of the rules (which LRT continues to maintain). However, and central to this point, the key arguments raised by LRT were not

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<sup>14</sup> See, e.g., *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9790, para. 19.

<sup>15</sup> LRT Provisional Petition, at 2-11.

<sup>16</sup> See *Comsat-Lockheed Reconsideration Order*, FCC 02-197 (rel. July. 5, 2002); See 47 C.F.R. § 1.106(n)

<sup>17</sup> *Comsat-Lockheed Reconsideration Order*, FCC 02-197, at paras. 2, 20-21. LRT fully recognizes that the filing of pleadings in a Petition for Reconsideration proceeding does not obviate the finality of the Commission’s action or its reliance upon it. The fact remains that the Applicants made representations in the Applications to the effect that the Lockheed-Comsat Merger Order was final. This representation is false. The Order will not be final until the appellate process is completed. The Applicants deliberate misrepresentation of the non-final status of the Lockheed-Comsat Merger Order misled all parties participating (or who considered participating) in this proceeding.

focused on the non-final status of the merger ruling, rather it was the licensee qualification issues raised in the context of that proceeding.

Stated simply, LRT established in its filings in the Comsat-Lockheed Merger Proceeding that Comsat had deliberately and repeatedly violated applicable statutes and rules by:

- (1) failing to notify the Commission of the criminal conviction of its Florida licensee subsidiary;
- (2) repeatedly over an 18 month period failing to notify the Commission that it was the subject of a criminal proceeding,
- (3) misrepresenting the direct involvement of Comsat senior management in the operations of its Florida subsidiary and
- (4) falsely denying that its Florida company held a Commission license- an action which has been admitted by Comsat (and Lockheed). Any one of these actions could properly lead to the revocation of licenses, and yet this entire series of inter-related, continuing violations have been overlooked by the Commission in the present ruling.

Furthermore, the Commission has previously been served with a Motion for Correction, Clarification and Retraction (LRT Motion) in the Comsat-Lockheed Merger Proceeding (a copy of the LRT Motion is appended hereto as Exhibit A). The motion establishes that the Commission's ruling in dismissing the LRT petition with prejudice was in error and in direct violation of the Commission's own rules, procedures and policies.

A key error cited in the LRT Motion was the Commission's failure to find Comsat guilty of filing a series of its Form 312 Satellite Station Transfer Applications, which included false information representing that Comsat was not a party to a criminal proceeding, when, in fact, Comsat (through its Florida subsidiary) had been the subject of a federal criminal grand jury proceeding dating to January 1999. The Commission in its Reconsideration Order erroneously found that Comsat was only required to disclose criminal convictions. However, the rules and the applicable Form 312 Applications specifically require the filing of information concerning all *pending* criminal proceedings.

Thus, the Reconsideration Order was issued in error in failing to find Comsat guilty of filing false applications, a grounds for license disqualification. The Commission also erred in finding Comsat as a qualified transferor-licensee in the instant Order.

The facts and issues raised by LRT in this proceeding relate directly to Comsat's actions, which should be found to constitute the basis for disqualifying it as holder and assignor of Commission

licenses and authorizations. For the Commission to fail to cite these facts and issues, and find Comsat qualified to continue as a licensee is in error.

As a result of its egregious history of past illegality , including the deliberate concealment of criminal activities, Comsat should be found to be unqualified to hold the licenses and authorizations at issue in this proceeding, and the entire proceeding should be made the subject of a full evidentiary hearing leading to revocation of all Comsat licenses. Additionally, Lockheed's participation in these actions following the completion of the merger in August 2000 should result in its licenses being noticed for hearing as well. LRT requests that such proceedings be commenced forthwith.

#### Error 6: The Commission Failed To Complete a Proper Competitive Analysis

The Commission's public interest analysis under sections 214(a) and 310(d) is supposed to include an evaluation of the competitive effects of the proposed transaction in both the relevant product markets and the relevant geographic markets.

In the present case, LRT has introduced a key factor, i.e. Intelsat's expansion plans. Evidence has been presented showing that Intelsat fully intends to acquire Eutelsat to expand its operational reach. This issue having been raised, the Commission must (1) inquire into Intelsat's expansion plans and (2) conduct a full competitive analysis to determine the impact of such additional transactions on domestic and international carriers.

As noted, the Commission dismissed the Eutelsat expansion issue as properly raised by LRT without consideration.<sup>18</sup> This is an error. In order to complete a full competitive assessment as required, the Commission must undertake a full investigation of Intelsat's expansion plans, and the effects, which such actions will likely have upon competition. Such an investigation must start with the review of all Intelsat board minutes in which the Eutelsat acquisition and any other similar transactions have been discussed. Further, the Commission should review all documents submitted to Eutelsat by Intelsat in connection with its acquisition plan.

It is noted that WorldCom and Sprint have already argued that the merger of Intelsat and Comsat will involve a horizontal combination of the largest and second-largest U.S. providers of wholesale Intelsat services that would result in increased market power by the merged entity. It would produce a vertical integration of wholesale space segment with retail businesses that would increase the ability of the combined entity to impose a price squeeze on competitors that

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<sup>18</sup> Intelsat Order, ¶ 52



must purchase Intelsat services as an input.<sup>19</sup>

Further, the competing satellite companies have contended that the provision of Intelsat services is a distinct product market because the Commission regulates Comsat as dominant on thin routes.<sup>20</sup> They state that it is primarily on thin routes that WorldCom, Sprint and other major U.S. customers heavily consume Intelsat services.<sup>21</sup> They further state that they would have no reason to purchase Intelsat services from Comsat if fiber optic cables or other satellite systems were available as viable alternatives.<sup>22</sup> All of these concerns would be further exacerbated by the acquisition of Eutelsat by Intelsat.

Error 7: The Commission Has Erroneously Found that the Intelsat  
Acquisition of Comsat Is Consistent with the ORBIT Act

In its Order, the Commission has found that:

[T]he proposed transaction would achieve public interest benefits. INTELSAT's privatization and transformation into a strong commercial entity licensed in the United States has been a U.S. policy goal. The assignment of Comsat's licenses and authorizations, respectively, to Intelsat LLC and Intelsat USA License Corp. would accelerate the transformation of the Intelsat companies into commercial entities on par with competitive providers of international transmission service capacity. Intelsat Order, footnote omitted.

This finding is clearly in error.

A review of Congressional history shows that in passing the ORBIT, the Congress sought to achieve several purposes. Without question, the primary goal was to facilitate the privatization of Intelsat and its companion international satellite organization, Inmarsat. Another key objective was the stabilization and rehabilitation of Comsat, the nation's first, and once leading satellite company. At the time of consideration of the ORBIT Act, Comsat was in dire financial condition, faced with decreasing service revenues. These significant reverses forced management to sell off all non-core assets, including the company's office buildings, in order to raise working capital. To engineer the recovery of Comsat, the Congress authorized the complete takeover of Comsat by Lockheed, the country's largest defense contractor.

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<sup>19</sup> Worldcom/Sprint Petition at 2-3, 8-10

<sup>20</sup> Worldcom/Sprint Petition at 10.

<sup>21</sup> *Id.* at 11.

<sup>22</sup> *Id.* at 2.

When the Comsat takeover legislation was before Congress, the bill's objectives were summarized by Congressman Billy Tauzin, chairman of the Telecommunications, Trade and Consumer Protection Subcommittee, as follows:

Moreover, this compromise legislation will enable the completion of Lockheed Martin's proposed \$2.7 billion dollar acquisition of COMSAT, which will further enhance market competition. ...COMSAT's business performance acutely demonstrates that COMSAT must reinvent itself if it is to better react to the ever-evolving marketplace. Because of its inability to swiftly take advantage of new market opportunities, COMSAT, over the years, has experienced a steady decline in market share. This compromise legislation unshackles COMSAT from the antiquated regulatory burdens that have to date hampered its success. This legislation enables Lockheed Martin to complete its acquisition of COMSAT. By fortifying COMSAT, through an infusion of financial and human capital, Lockheed Martin will transform COMSAT into a vibrant commercial company, thereby introducing a new American company in the satellite services marketplace. Cong. Rec.: March 9, 2000 (House)] [Page H902], emphasis added.

In the Senate, Sen. Conrad Burns, Chairman of the Communications Subcommittee, included the following remarks on this subject upon the adoption of the Conference Report:

At the end of the day, the conference agreement will lead to enhanced competition in telecommunications services, resulting in real consumer benefits of more choices, lower prices and new services. For this, we should all be very proud. I strongly urge my colleagues to adopt this conference report. Congressional Record: March 2, 2000 (Senate)] [Page S1155], emphasis added.

From these statements, it is quite obvious that Congress expected that, among other things, they were amending the Satellite Act to authorize the Comsat-Lockheed merger as a way to rescue Comsat from its precarious financial position. What they quite obviously foresaw was Lockheed providing significant resources – financial and otherwise- to shore up Comsat and allow it to reclaim its former leadership position in the communications industry.

What is also quite clear is that the proposed Intelsat acquisition of Comsat's primary operating assets was never contemplated by the Congress. Further, the proposed transaction is directly contrary to the objectives of the members. It was the express purpose of Congress to authorize Lockheed's acquisition of Comsat so as to create an independent, financially strong and technologically advanced company, competing with the other satellite based carriers. This goal will not be achieved by the proposed transaction. Comsat will in actuality disappear from the scene and competition will be reduced.

Indeed, on proper reflection, the Commission must conclude that it is highly unlikely that the Congress would ever have given approval to a proposal to allow Comsat, the country's first, and formerly leading, satellite company, to be broken up and acquired in large part by Intelsat, a foreign controlled entity.

The Congressional statements with regard to the adoption of the ORBIT legislation also include a Joint Statement of Primary Original Sponsors of Legislation Committee on Commerce, former representative and Committee Chairman Tom Bliley (R-Va) and Ranking Democrat of the Telecommunications, Trade and Consumer Protection Subcommittee Edward J. Markey Representative John Dingell (D-MI), ranking Democrat on the House Commerce Committee. The Joint Statement sets out the following observation:

The policy reasons for section 624 [of the ORBIT act] were that Inmarsat should not be able to expand by repurchasing all or some of, or control, its spin-off, ICO. A primary purpose of the legislation is to dilute the ownership by signatories or former signatories of INTELSAT, Inmarsat and their spin-offs. Cong. Rec.: March 9, 2000 (House)] [Page H902], emphasis added

The statement reflects the Committee's clear intention, as a matter of national policy, to mandate the dilution of the interests of the original INTELSAT and Inmarsat entities by reducing the share interests of their signatories. The proposed transaction , which in effect increases the interests of Intelsat through its acquisition of Comsat's primary operating assets, is directly contrary to the express goals and interests of the Congress.

It was a key objective of the Congress to assure that the ownership interests of all INTELSAT (and Inmarsat) signatories in existence as at the date of the enactment of the ORBIT legislation ("Identified Signatories") be strictly limited. Further, it was the objective of the Congress to limit the original ownership interest of Intelsat. These principles are violated by the proposed transaction, which would result in the expansion of Intelsat through its acquisition (and dissolution) of Comsat, an original finding shareholder of Intelsat.

The Commission is in error to conclude that the proposed transaction is consistent with the goals and objectives of the ORBIT Act. For this reason alone, the Intelsat Order should be revoked.

Error 8: Based on Comsat's Past Conduct, the Commission Should Grant Petitioners' Requests for Strict Regulation of Future Activities

Over the past six years, LRT has submitted substantive evidence of Comsat's continuing, deliberate and consistent violations of the rules and regulations of the Commission. LRT has not been alone in seeking the intervention of the Commission and courts to sanction Comsat. Other competitors such as PanAmSat and Stratos, customers such as NewsCorp, and even the Commission itself have found it necessary to commence legal proceedings, seeking to harness Comsat's misuse of power as a government sponsored entity.

This history of Comsat's past misfeasance, malfeasance and illegality, extending to criminal convictions, should – in the event the proposed transaction is eventually authorized- result in the adoption in a series of protective orders granting the relief sought by petitioners. These safeguards should include the following:

AT&T has requested that the Commission require Intelsat LLC to provide space segment to CWS and other U.S. customers on a common carrier basis.<sup>23</sup> In particular, AT&T argues that the Commission should order the former CWS to operate separately from Intelsat LLC, with separate books of account and separate switching and transmission facilities.<sup>24</sup>

Given the past history of serious statutory and regulatory violations by Comsat, there is every reason for the Commission to grant the AT&T request. Should the transaction ultimately be approved, it is critical that the Commission establish a mechanism to closely supervise the future actions of Comsat-Intelsat, including imposing common carrier status on Intelsat LLC.

WorldCom/Sprint have argued that they do not have equal access opportunities because Comsat retains control of the majority of Intelsat capacity in the United States and charges a premium over Intelsat pricing.<sup>25</sup>

The Commission should adopt an order setting forth a specific procedure related to Intelsat capacity as follows: where Intelsat capacity committed to Comsat becomes available upon the expiration of contracts with Comsat's customers, such capacity should be made accessible for new business in a common pool of Intelsat capacity, and the capacity pool should continue to expand as existing contracts between Comsat and its customers expire.

Petitioners Worldcom and Sprint also asked the Commission impose certain operating conditions. Specifically, they have requested that the grant of the Applications be conditioned on Intelsat changing the prices in the Comsat long-term contracts it will acquire to the circuit prices charged by Intelsat at the time petitioners purchased the circuits pursuant to long-term contracts.<sup>26</sup> They also asked that grant of the Applications be conditioned upon the merged entity offering U.S. customers the same prices as it offers to customers around the world.

The Commission rejected these requests on grounds outlined in prior rulings<sup>27</sup>. However, these earlier rulings did not consider in any way Comsat's past conduct involving continuing violation of Commission rules. Clearly, such illegal behavior must be found to necessitate the adoption of

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<sup>23</sup> AT&T Petition at 2, 7-8.

<sup>24</sup> AT&T Petition at 1-2, 7.

<sup>25</sup> Worldcom/Sprint Petition at 4-5.

<sup>26</sup> Worldcom/Sprint Petition at 12.

<sup>27</sup> *Direct Access Order*, 14 FCC Rcd at 15754, para. 125.

strict sanctions and prohibitions, including those posed by WrlCom/Sprint.

In view of the past actions of Comsat constituting deliberate and repeated violations of Commission rules, the Petitioners' requests for price administration conditions should be granted. Further, the Commission should require Intelsat to submit monthly reports outlining all steps taken to comply with the said conditions. As additional protection, again in light of past violations, the Commission must impose common carrier status on Intelsat LLC and Intelsat USA Sales Corporation.

#### Error 9: The Commission Has Failed To Properly Limit Foreign Control of Intelsat

Section 310(b)(4) of the Act establishes a twenty-five percent benchmark prohibition for indirect, attributable investment by foreign individuals, corporations, and governments in U.S. common carrier radio licensees. 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.<sup>28</sup>

Applicants have identified proposed indirect foreign investment in Intelsat LLC that would exceed the twenty-five percent benchmark set by section 310(b)(4). The Commission has concluded that it would not serve the public interest to deny the assignment applications because of the identified indirect foreign ownership of Intelsat LLC. A review of the operative facts shows this finding to be in error.

In evaluating an applicant's request for approval of foreign ownership interests under section 310(b)(4), the Commission uses a "principal place of business" test to determine the nationality or "home market" of foreign investors.<sup>29</sup>

The Commission has confirmed that the Applicants did not submit a formal principal place of business showing for Intelsat, Ltd. or its foreign subsidiary holding company. Therefore, the Commission cannot make any documented finding with respect to relevant performance test without the said submissions. Any finding would be without factual basis and in error. The Order must be rescinded for this reason.

The Commission also premised its rationale on another faulty basis. It states that

According to Applicants, Lockheed Martin, a U.S. corporation, holds approximately

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<sup>28</sup> See 47 U.S.C. § 310(b)(4)

<sup>29</sup> *Foreign Participation Order*, 12 FCC Rcd at 23941, para. 116.

24.05% of equity and voting interests in Intelsat, Ltd. through Comsat Corporation and related Comsat business entities.<sup>30</sup> The Applicants further represent that the remaining equity and voting interests in Intelsat, Ltd. are widely dispersed among more than 220 entities, representing more than 145 nations.<sup>31</sup>

However, a review of documents submitted by Lockheed to the US Securities and Exchange Commission reveal that its 24.05% stock interest in Intelsat is carried on the Lockheed balance sheet as an asset subject to liquidation. Furthermore, in public statements issued by Intelsat in connection with its planned initial public offering, the company has confirmed that a number of its shareholders (presumably including Lockheed) would be seeking to sell their shareholdings as part of the underwriting. Therefore, the Commission has been placed on notice by the actions of both Lockheed and Intelsat that any assumptions concerning the future composition of Intelsat shareholders cannot be based on present shareholder data. Therefore, its conclusions as set forth in the Order are in error.

Further, on this same subject, the Commission states in the Order that

When the Commission first considered the indirect foreign ownership of Intelsat LLC in the *Intelsat LLC Licensing Order*, it found that approximately ninety-one percent of Intelsat LLC shares would be held by entities that had their home markets in WTO Member countries (including the United States).<sup>32</sup> Applicants state that, since that time, the ownership of Intelsat, Ltd. has not materially changed.<sup>33</sup> They assert that the only change in ownership interests since the *Intelsat LLC Licensing Order* is an increased degree of WTO Member country ownership.<sup>34</sup>

Based on the information placed on public record concerning future stock sales by Intelsat members in general and Lockheed in particular, it is clear that the representations made to the Commission by the Applicants are purposely misleading, and in fact false. The Applicants should be sanctioned for submitting such incomplete and false data.

The Commission also referenced other stock ownership data submitted by Applicants:

Applicants attached to their petition for declaratory ruling a listing of Intelsat, Ltd. shareholders, each shareholder entity's "nationality," the status of the home country's membership in the WTO, the percentage of shares held by each stakeholder, and the percentage of foreign government ownership of each shareholder, if any. According to the revised shareholder list, entities from non-WTO Member countries, including WTO Observer countries, indirectly hold, in the aggregate, 6.07% of the equity and voting interests, well under the twenty-five percent threshold of non-WTO Member ownership and voting established by the *Foreign Participation Order*.

This data is also purposely misleading. The Applicants know fully that various ownership changes will take place immediately upon the closing of the planned *ipo*. For the Applicants to submit data as representative of the Intelsat shareholder composition, when knowing that

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<sup>30</sup> See Petition for Declaratory Ruling, *supra* note 1, at 9.

<sup>31</sup> See *id.*

<sup>32</sup> *Intelsat LLC Licensing Order*, 15 FCC Rcd at 15484, para. 55.

<sup>33</sup> See Petition for Declaratory Ruling, *supra* note 1, at 9.

changes will occur as a result of future actions taken by them and other signatory shareholders, is clearly misleading. Such actions should be sanctioned.

LRT has further argued that grant of the Applications would result in noncompliance with section 310(b)(4). LRT contends that the joint ownership of Intelsat, Ltd. by several foreign entities, including foreign governmental entities, could result in a government entity increasing its spending for communications services at price levels that would subsidize Intelsat LLC, leading to an artificial and anti-competitive increase in Intelsat LLC's market share, adversely impacting other competitors.<sup>35</sup>

Consistent with the *Foreign Participation Order*, the Commission presumes that indirect foreign ownership by investors from WTO Members serves the public interest. This is an error. In this regard, the Commission has made no distinction between indirect government and private foreign ownership of U.S. common carrier licensees.<sup>36</sup> The Commission has concluded that LRT has not provided persuasive evidence in this case to rebut the presumption that market entry by WTO Member investors, including foreign government stakeholders, raises no competitive concerns.

In point of fact, in a companion proceeding (the Comsat-Telenor License Assignment proceeding), LRT presented documentary evidence showing that a government owner of Inmarsat had made an uneconomic bid to secure a contract offered by the North Atlantic Treaty Organization. Such evidence directly supported the conclusion that direct and indirect ownership of satellite carrier organizations by governmental entities can result in anti-competitive trade practices, contrary to the public interest.

The Commission failed to undertake a proper investigation in the Comsat-Telenor proceeding. It has compounded this failure in the present proceeding by rejecting, out of hand, LRT's government dominance objection. The fact remains that governmental entities can, through their extensive economic powers, undertake business transactions, which can constitute unfair trade practices, thereby victimizing private sector companies that lack access to such resources.

In point of fact, these serious dangers exist wherever a government assumes direct or indirect control over an entity. The Commission must act to prohibit such anti-competitive practices (and threats of such actions) by limiting total foreign government ownership of communications companies to no more than 25% of the outstanding equity.

LRT would also note that the Commission's analysis of predatory practices is overly simplified

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<sup>34</sup> Petition for Declaratory Ruling,  
<sup>35</sup> LRT Provisional Petition at 20-31.

and simply not applicable to the present market conditions. The Commission observes as follows:

As the Commission previously has recognized, to consolidate and maintain market power, a company would need to force the exit of its competitors from the market and prevent the entry of new competitors.<sup>37</sup>

Such a view is overly simplistic and is not based on a real world analysis of market forces. As shown in the evidence heretofore submitted to the Commission by LRT, a government controlled company with call on significant debt and equity reserves can, through uneconomic bids (loss leader bids), secure new business, thereby injuring private sector competitors. Such use of economic power by a government entity is unfair and wrong.

The government entity does not have to consolidate and maintain market power to seriously injure one or more competing companies. Indeed, in the example case cited by LRT in the Comsat-Telenor proceeding, a small US carrier company that had previously held the NATO contract, lost out to the government controlled competitor that submitted an uneconomic bid. The US company was directly injured by the unfair actions of a government controlled entity. Such an outcome can and should be foreseen by the Commission, and it should use the 25% ownership cap to foreclose any such practices from occurring.

Another troubling concern must be confronted with respect to government ownership. Countries can act in concert through public compacts, as well as secret alliances. Therefore, the use 25% cap for multiple countries is actually not a true safeguard, when confronting possible economic misdeeds being engineered by government interests. A far better rule would limit individual shareholdings to no more than 7.5% individually, and total governmental ownership (direct and indirect) to no more than 25% in the aggregate. With respect to non-WTO investment, there would not appear to be any reason to allow such investment in total to exceed 10% in the aggregate.

#### Error 9 : National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

When analyzing any transfer of control or assignment application in which foreign ownership is an issue, the Commission considers any national security, law enforcement, foreign policy, and

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<sup>36</sup> See *Comsat-Telenor Order*, 16 FCC Rcd at 22910, para. 30 (citing *VoiceStream/Deutsche Telekom Order*, 16 FCC Rcd at 9810-11, para. 51).

<sup>37</sup> See *Comsat-Telenor Order*, 16 FCC Rcd at 22912, para. 33



trade policy concerns raised by the Executive Branch.<sup>38</sup>

The Applicants made the following representations with respect to national security issues:

Applicants stated that they do not provide common carrier switched services internationally or domestically. Moreover, Comsat and Intelsat stated that they do not provide, and have no plans to provide, switched communications services via equipment authorized under current or anticipated future Title III radio licenses. Intelsat, however, has made a commitment to notify the Executive Branch at least 30 days before providing switched services, including any such provision of services via equipment authorized under Title III licenses. Based on these statements and the commitments made by Intelsat, the Executive Branch has not filed comments or objections to the proposed transaction. Intelsat Order, footnotes omitted, emphasis added.

It is far from clear that an approach such as that outlined is sufficient, given both the fundamental change in telecommunications technologies throughout the world, and the post 9/11 increased national security concerns in the U.S.

Clearly, switched services are not the only channels used to transmit voice, picture and data communications for personal use, including clandestine or coded transmissions. Intelsat circuits can be utilized in numerous ways to transmit all types of traffic. To follow a policy of limiting concern to switched traffic is a policy decision firmly rooted in the 20<sup>th</sup> Century. This in an erroneous position. It is totally unacceptable given present day technology, and the unfortunate increased threat levels which must be encountered by US citizens on a regular basis.

Given these fundamental concerns, LRT restates its request that the Commission and Executive Branch together with the newly established Department of Homeland Security should establish a special task force to assess whether the Applications raise national security implications.<sup>39</sup> Such an assessment should review all existing and projected telecommunications technologies, and as a threshold matter, reject the concept that security issues should only be found to relate to switched circuits.

LRT, continues to recognize that national security considerations are matters “reserved” to the appropriate U.S. government agencies and departments.<sup>40</sup> However, for the reasons it has set forth in this proceeding, LRT finds that there is every reason to establish the proposed special task force to assess whether the Applications raise any national security implications. No action on the Applications should be taken until such a comprehensive review is conducted.

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<sup>38</sup> *Foreign Participation Order*, 12 FCC Rcd at 23918-21, paras. 59-66.

<sup>39</sup> LRT Provisional Petition at 32.

<sup>40</sup> *Id.*

Error 10 : The Past Illegal Actions of Comsat and Lockheed Warrant the Divestiture of All Proceeds Received from the Sale of the Assignment Transaction

In its Petition, LRT has argued that the Commission should adopt an order requiring Lockheed to pay to the Commission all net proceeds from its sale of Comsat assets for the purpose of establishing a Digital Conversion Fund and various other conditions.<sup>41</sup> The Commission dismissed the LRT proposal observing as follows :

[W]e are not persuaded to adopt LRT's proposal that the Commission should require Lockheed Martin, a private entity, to use proceeds from CWS transactions to fund some type of digital conversion fund. The Commission has previously rejected a similar proposal by LRT in another proceeding. The proposal presented here has no relevance to the issues in this proceeding other than the fact of Comsat's involvement. Intelsat Order, footnote omitted.

The Commission's conclusion is error.<sup>42</sup> There is every reason to adopt the proposed sanction. LRT has fully demonstrated in this and a series of other prior proceedings that Comsat and its owner, Lockheed, have purposely, repeatedly and routinely violated laws, rules and policies administered by the Commission. Such behavior requires the sternest type of sanctions. An order requiring Lockheed (a willing abettor of Comsat's illegal activity) to divest all net proceeds realized from the sale of Comsat assets would constitute an appropriate penalty.<sup>43</sup>

As noted above, LRT has placed on the record before the Commission ample evidence showing that Comsat, and later Lockheed, over the last several years have followed a policy, which has included the systematic violation of fundamental Commission rules and policies. These actions have misled the Commission and presented false information and/or purposely withheld facts and evidence from the Commission staff. If any other licensee attempted 10% (or even less) of the illegal actions that LRT has encountered at the hands of Comsat/Lockheed over the past several years, it would certainly have had its licenses summarily revoked, and been subjected to significant fines and forfeitures. But Comsat, a government sanctioned entity, operating for years in the shadow of national security interests, has found a way thus far to escape sanction. So too has Lockheed. Both companies have to date been left free of even the slightest demerit, and been permitted to leave the field unhindered, and with pockets bulging with literally billions in ill-gotten gains.

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<sup>41</sup> LRT Provisional Petition at 16; LRT Reply at 6-8.

<sup>42</sup> See *Comsat-Lockheed Reconsideration Order*, FCC 02-197, at paras. 5 and 20. See also *Comsat Corporation*, FCC 97-422, 13 FCC Rcd 2714, 2927, para. 33 (1998), *recon. denied*, 15 FCC Rcd 19516 (2000), in which the Commission emphasized that Comsat was a private corporation not subject to government management. This finding is erroneous. While Comsat is owned by Lockheed, it remains a government sponsored enterprise under the supervision and control of the Executive and Legislative Departments. It was for this very reason that the Lockheed and Comsat had to seek Congressional action to authorize their merger.

<sup>43</sup> As LRT has stated in the past, the Commission is fully authorized pursuant to the Comsat Satellite Act to order such a divestiture of liquidation proceeds. (47 USC § 701 ). The Commission did not dispute this position in the Intelsat Order.

It is clearly time that the guilty parties be properly sanctioned by the Commission. In the past, Comsat has operated above the law, seeking to take improper advantage of its unique quasi-governmental status. It has been challenged many times by others such as PanAmSat, but time and again, Comsat used its government shield to avoid proper and long overdue sanctions.

As the days of its corporate existence draw to a close, Comsat and its parent and executives must finally be held accountable for their past conduct above and beyond the law.

It may be displeasing and disquieting for the Commission to review the illegal conduct of this government sponsored entity. However, in the final analysis, the intervention requested by LRT is clearly long overdue. Indeed, LRT fully believes that the Commission has (or can gain) access to information of illegal conduct on the part of Comsat officials, far beyond the evidence of serious violations cited in past pleadings.

In fact, on more than 30 occasions, LRT has unsuccessfully sought the issuance of subpoenas by the International Bureau to gain access to documentary evidence of illegal conduct on the part of Comsat and its management including the unauthorized sale of satellite circuits and facilities and communications intercepts, over billing, non-billing, money laundering, trafficking in pornography and various other serious violations of law. Unfortunately, LRT has not been assisted in these efforts, and its proposed full scale hearing concerning Comsat's illegal operations has never been held. Here too, LRT was not alone. PanAmSat also was unsuccessful in seeking such a general hearing into the "business" of Comsat.

But what charges have been placed on the record by LRT against Comsat- including criminal convictions, filing of false information, deliberate concealment of criminal proceedings, fraudulent statements, misrepresentation, abuse of power- are all currently before the Commission. Such a truly outrageous record of illegal conduct on the part of a government sponsored enterprise must result in the adoption of fines, forfeitures and sanctions.

Clearly, it is right and proper for the Commission to revoke all Comsat licenses and order that proceeds received from the sale of all of its assets be turned over to the proposed Digital Conversion Fund to aid the conversion of small market, minority owned and public broadcasting stations,

All of Comsat's assets including its operating divisions and its shares in Intelsat, Inmarsat and New Skies, were purchased with monies largely derived from the company's monopoly over the sale of Intelsat facilities to domestic telecommunications carriers. For this reason, and based on the fact that Comsat first and last is a government sponsored enterprise, its assets should be deemed to be the property of the United States.

To date, the Commission has not found “merit” in LRT’s proposals to strip Comsat (and Lockheed) of all proceeds received as a result of the satellite company’s liquidation. LRT would respond that in the interest of fundamental fairness and justice, the Commission must order the divestiture of all Comsat liquidation proceeds, monies which at the end of the day should be viewed as assets of the U.S. and resources sorely needed to be placed to the purpose advocated by the Digital Conversion Fund. Certainly, the owners and operators of small market, minority-owned and public television stations which lack the financial resources to upgrade their facilities as mandated by the Commission must see great “merit” in the LRT proposal.

#### 4. CONCLUSION

The Intelsat Order represents the latest in a series of rulings stretching over the last six years, which, in the view of LRT, have consistently disregarded, dismissed and concealed evidence of unethical behavior, malfeasance, misfeasance, and illegal offenses (including criminal convictions) on the part of Comsat, a company which, first and foremost, was and continues to this day to be a government sponsored enterprise.

In its Order at ¶ 52, in rejecting LRT proposal to impose stern penalties for Comsat’s past behavior, the Commission identifies Lockheed as a “private entity” as grounds for its decision to refrain from adopting severe sanctions as proposed. The fact remains however, that Comsat is the primary party guilty of the past violations, and Comsat, as a government sponsored entity, is required by law to act in the public interest. Further, it remains the Commission’s obligation to supervise Comsat and, in so doing, to enforce this public interest standard and to impose appropriate penalties for the company’s violations.

For the past six years, the Commission has, again in LRT’s view, woefully failed to carry out its delegated duties with respect to properly regulating and policing Comsat’s illegal, unethical and immoral<sup>44</sup> actions. As Comsat stands on the brink of extinction<sup>45</sup>, the Commission must step forward and properly execute its delegated responsibilities in sanctioning the past illegal conduct of Comsat, Lockheed and their key executives.

It is the Commission itself, which must accept full responsibility for failing to properly find Comsat guilty of repeatedly and intentionally violating its rules and regulations. Indeed,

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<sup>44</sup> LRT views Comsat’s past status as the country’s largest distributor of pornography to 1 million hotel room throughout the court to constitute both illegal and immoral behavior (in violation of the public interest standard of the Satellite Act).

Comsat's actions throughout the proceedings in which LRT has participated have made an utter mockery of the rule of law as administered by the Commission. Comsat has, among other illegal activities, consistently and purposely evaded and violated disclosure rules, dissembled and misrepresented facts, disregarded ex parte rules, filed false and misleading information and withheld vital and relevant evidence from the Commission.

Over the past six years, LRT, and LRT alone, has placed evidence on the record before the Commission establishing the following:

1. Comsat's former Florida subsidiary (Electromechanical Systems Inc. ("EMS")) on July 17, 2000 entered a plea agreement with the US Attorney for the Middle District of Florida, admitting that it had defrauded the US Department of Defense and US Navy and obstructed justice in selling communications equipment for use on Navy ships. The Comsat company was fined and ordered to pay nearly \$10 million in restitution and was placed on probation for five years. This information was not revealed to the Commission prior to its initial grant approving the Lockheed-Comsat merger on July 27, 2000. (See *USA v. Electromechanical Systems, Inc.*, Criminal No. 8:00-CR-00253 ( US District Court, Middle District of Florida (Tampa Division) ("*USA v. EMS*"). LRT has provided documentary evidence establishing that Comsat filed false applications which failed to notify the Commission of these criminal activities.
2. Contrary to the Comsat/Lockheed representations, LRT has established through the submission of documentary evidence secured through the Secretary of State of Florida that senior management of Comsat exercised control over the Comsat Florida subsidiary, raising serious issues of liability. LRT has provided documentary evidence establishing that Comsat filed false applications which failed to notify the Commission of these illegal activities.
3. Lockheed/Comsat have admitted to filing false information with the Commission, misrepresenting the licensee status of the Comsat Florida subsidiary. This matter has been referred to the Enforcement Bureau for adjudication.
4. Lockheed/Comsat failed to inform the Commission that Comsat was made the subject of a Federal False Claim action related to the actions of its Florida subsidiary, involving fraud, misrepresentation, intimidation and coercion related to the company's involvement in defrauding the Defense Department and Navy and illegally discharging company employees who sought to report the illegal activity to authorities. This litigation was ultimately settled by Lockheed through payment of substantial damages to the plaintiffs. (*United States ex rel. Beattie et al v. Comsat Corporation et al Case No. (1996CV00966) ("USA v Comsat").*) LRT has provided documentary evidence establishing that Comsat filed false applications which failed to notify the Commission of these illegal activities.
5. Since December 29, 1995, LRT has had a Petition for Rule Making before the Commission seeking the adoption of a rule to prohibit Comsat and other companies from distributing obscene films over closed circuit cable tv type distribution systems in hotels and other similar public venues without proper scrambling or other signal regulating equipment to assure that such programming is not made available to children. Comsat's

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<sup>45</sup> Lockheed is currently liquidating Comsat. LRT views this action as a direct violation of Lockheed's representations to Congress undertaking to invest financial and manpower resources to restore Comsat.

participation in the distribution of obscene moves to hotels directly violated the public interest standard of the Communications Satellite Act.

Other than referring one of the above series of violations to the Enforcement Bureau <sup>46</sup>(a matter which remains under review), the Commission has consistently failed to properly enforce its rules and regulations with respect to Comsat, a government sponsored entity.

What other private entity could expect to avoid strict censure (including license revocation), where it deliberately and repeatedly failed to inform the Commission that one of its subsidiaries (in fact, a subsidiary holding a Commission license) was the subject of a grand jury proceeding for defrauding the US Government and obstructing justice? Yet, in the case of Comsat, in this proceeding and other prior actions, the Commission has completely disregarded these most serious of offenses.

Comsat's egregious conduct must be punished. And this action must be accomplished in this proceeding before Comsat and its officers and directors slip quietly away into the night, having successfully dismantled this once proud example of US science and technology and divided the resulting significant proceeds among themselves.

LRT respectfully requests the Commission to revoke the Intelsat Order and undertake the series of actions advocated above, including the revocation of all Comsat licenses with proceeds of the liquidation to be turned over to the Digital Conversion Fund to assist the financing of the upgrading of the technical facilities of small market, minority owned and public television stations to the new HDTV standards.

Respectfully submitted,

/s/ William L. Whitely

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November 23, 2002

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<sup>46</sup> Comsat admitted to filing false information concerning its licensee status of its subsidiary, EMS.

## **EXHIBIT A**

### **MOTION FOR CORRECTION, CLARIFICATION AND RETRACTION**

Submitted by Litigation Recovery Trust,

July 19, 2002

in Comsat-Lockheed Merger Order Proceeding ,

File No. SAT-T/C-20000323-00078, et al.

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	File No. SAT-T/C-20000323-00078
Lockheed Martin Corporation,	)	
COMSAT Government Systems, LLC,	)	File No. SAT-STA-20000323-00073
And COMSAT Corporation	)	
	)	
Applications for Transfer of Control of	)	
COMSAT Corporation and its Subsidiaries,	)	
Licensees of Various Satellite, Earth Station	)	
Private Land Mobile Radio and Experimental	)	
Licenses and Holders of International	)	
Section 214 Authorizations	)	

**MOTION FOR CORRECTION, CLARIFICATION AND RETRACTION**

Litigation Recovery Trust (“Petitioner” or “LRT”), on behalf of its members and its associated entities<sup>47</sup>, hereby submits the instant MOTION FOR CORRECTION, CLARIFICATION AND RETRACTION . On July 5, 2002, the Commission issued an Order on Reconsideration (“Order”) in response to a Petition for Reconsideration (“Petition”) filed by LRT in the above-captioned proceeding in which the Commission has authorized the merger of Comsat Corporation (“Comsat”) and Lockheed Martin Corporation (“Lockheed Martin”).<sup>48</sup> Also before the Commission were additional motions and supplemental pleadings filed by LRT. Lockheed Martin, Lockheed Martin Global Telecommunications, LLC (“LMGT”) and Comsat, collectively referred to as “Lockheed companies,” opposed LRT’s petitions and supplemental pleadings and motions.

**A. 1. Summary**

LRT views the Order as having been designed, intentionally or unintentionally, to overlook, disregard and in some instances erroneously dismiss evidence of illegality on the part of Comsat and its parent, Lockheed. LRT regards the illegal actions of these companies as

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<sup>47</sup> Litigation Recovery Trust represents the rights and claims of certain individuals, and includes the following entities: Committee to Restructure the International Satellite Organizations (“CRISO”) and Digital Conversion Organization (“DCO”). The instant filing is part of LRT’s continuing corporate performance and governance monitoring and assessment program.

<sup>48</sup> The Commission staff faxed a copy of the ruling to LRT on July 9,2002.



more serious than the litany of the recently discovered offenses of Enron, WorldCom, Tyco and other corporate wrongdoers. What makes the illegal and unethical conduct of Comsat and Lockheed so much worse is the fact that Comsat was founded by Congress and mandated to operate in the public interest<sup>49</sup>. Furthermore, its parent, Lockheed, is the country's largest defense contractor and, as such, is also expected to conduct its business dealings in accordance with the highest ethical and legal standards. Both corporations, as reflected in the Order, LRT's prior submissions and this Motion, have repeatedly violated these ethical standards and federal laws and regulations, and accordingly should be severely sanctioned.

For six years, LRT has sought the intervention of the Commission to sanction illegal conduct on the part of Comsat and later Lockheed. The subject Order is incorrectly summarized at ¶ "2" as a "dismissal" of LRT petitions. In fact, the Order actually constitutes the first ruling by the Commission in response to an LRT petition, which has found Comsat guilty of illegal conduct, i.e. the filing of false information<sup>50</sup>. Unfortunately, as outlined below, the Commission in its Order has overlooked, disregarded or erroneously dismissed other evidence of legal violations by both Comsat and Lockheed. Furthermore, the Order contains a number of material errors, including the misstatement of requirements for the reporting of criminal proceedings involving licensees as required under FCC Form 312. This Motion is intended to correct these serious errors and omissions.

In addition, the Order at ¶ 19 includes an unsupported and improper admonition, accusing LRT of misuse of Commission process. This censure is included in the Order, notwithstanding the fact that, as confirmed in the Order, it was LRT's independent research that found Comsat/Lockheed guilty of filing false information with the Commission. The Commission's action in adopting the admonition infringes the Constitutional rights of free speech, petition and due process of LRT members. LRT petitions for the immediate retraction of the ¶ 19 admonition. Further, LRT should be commended for its continuing investigations and research dedicated to public interest objectives concerning statutory and regulatory violations by licensees, including Comsat and Lockheed.

## 2. Request for Corrections and/or Clarifications

This pleading seeks the adoption of necessary and appropriate corrections and clarifications so that the reissued, corrected Order can be submitted by LRT for proper review

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<sup>49</sup> See Communications Satellite Act of 1962, as amended, 47 USC § 701, et seq. ("Satellite Act").

<sup>50</sup> See Order, dual- numbered footnote 29 [second].

by the U.S. Court of Appeals. Consequently, expedited action on this Motion is respectfully requested.

A. Order Erroneously Omits Reference to Comsat's Filing Which Misrepresented its Control of the Florida Subsidiary Which Executed A Criminal Plea

On July 17, 2000, just days prior to the Commission's approval of the Comsat-Lockheed Merger ("Merger"), Comsat's Florida subsidiary, Electromechanical Systems, Inc. ("EMS") executed a plea agreement with the U.S. Department of Justice, admitting to defrauding the U.S. Navy and obstructing justice.<sup>51</sup> Further, EMS agreed to accept a sentence of probation and remit to the US Government \$7.5 million in restitution. The company was also fined. In its Petition, LRT referenced this criminal plea agreement and a companion Federal False Claim Action<sup>52</sup> brought by the Justice Department against Comsat. Id.

**In their joint Opposition, Comsat and Lockheed sought to distance Comsat and its senior executives from the criminal and false claim activities of EMS. As part of this strategy, the Lockheed companies submitted a Declaration executed by a Robert N. Davis, a former Associate General Counsel of Comsat and then counsel to LMG, which included the following statement provided under oath:**

While several employees and officers of Comsat and other Comsat entities also are officers or directors of EMS, this is purely for administrative purposes. None of these individuals is or has been involved in the day-to-day operations of EMS and none of these individuals participated in the EMS activities that led to the plea agreement. Declaration of Robert N. Davis, ¶6, emphasis added ( "Davis Declaration").

The "administrative purposes" defense offered by attorney Davis<sup>53</sup> in September 2000 is quite similar to the excuses offered by directors of Enron, Tyco, WorldCom and other corporate wrongdoers that have recently been raised in Congressional and court testimony. Obviously, the Comsat "administrative purposes" defense is of no legal effect or relevance. Directors and officers of companies are fully responsible for all actions undertaken by the corporations while

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<sup>51</sup> See Plea Agreement of EMS entered in *USA v. Electromechanical Systems, Inc.*, Criminal No. 8:00-CR-00253 in the US District Court, Middle District of Florida (Tampa Division) ("*US v. EMS*"). See also, Order ¶ 8.

<sup>52</sup> *United States ex rel. Beattie et al v. Comsat Corporation et al Case No.* (1996CV00966) ("*USA v Comsat*").

<sup>53</sup> Mr. Davis at the time of filing the Declaration was a director of EMS and remains one of the two Comsat appointed directors controlling EMS, according to the latest report filed with the Florida Secretary of State, dated April 17, 2001. See <http://ccfcorp.dos.state.fl.us/scripts/cordet.exe>

they are in office. Under applicable state statutes, the legal responsibility and liability of officers and directors cannot be cavalierly explained away with the “administrative purposes” defense or any other such deception.

In fact, the Comsat “administrative purposes” defense for its management of its Florida subsidiary is in direct violation of Florida law, which vests all corporate management power in the board of directors.<sup>54</sup> Florida law requires directors to exercise good faith in managing the affairs of the corporation.<sup>55</sup> For Comsat senior executives to have failed to execute their responsibility in managing EMS would have made them personally liable for their actions.<sup>56</sup>

The Order includes no discussion of this blatant admission of illegal conduct by Comsat. The Opposition and Davis Declaration, which establish the direct participation of Comsat senior officers as officers and directors of EMS, were designed to improperly and illegally limit their involvement in EMS management to “administrative purposes” only. Indeed, there is no reference to the Davis Declaration at all in the Order. Given the serious nature of this illegal conduct, this erroneous omission must be corrected, and a proper and complete discussion of the “administrative purposes” defense must properly be added to the Order.

The Davis Declaration directly links senior Comsat officials to the activities of EMS, a company that pleaded guilty to defrauding the U.S. Government and obstructing justice. For Comsat to have sought to obfuscate, conceal and deny its connection to, responsibility for and authority over EMS by creating the “administrative purposes” subterfuge constitutes an obvious attempt to mislead the Commission and obstruct justice.

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<sup>54</sup> See State of Florida Code § 607.0801 Requirement for and duties of board of directors.--  
(1) Except as provided in s. 607.0732(1), each corporation must have a board of directors.  
(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under s. 607.0732.

<sup>55</sup> See State of Florida Code; § 607.0830 General standards for directors.--  
(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:  
(a) In good faith;  
(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and  
(c) In a manner he or she reasonably believes to be in the best interests of the corporation...

<sup>56</sup> See State of Florida Code; § 607.0830 General standards for directors  
(5) A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with this section.

In this post-Enron era, the Commission certainly cannot accept a proffered defense by a parent licensee corporation that it failed to exercise proper control over, and to accept full responsibility for, the actions of a licensee subsidiary. This is especially the case where the subsidiary was compelled to execute a criminal plea agreement with the U.S. Justice Department for defrauding the U.S. Government and obstructing justice.

The Order should be corrected to reference the Davis Declaration and to hold Comsat / Lockheed and their senior management responsible for their actions in submitting false and illegal information to the Commission in an effort to avoid full corporate liability for controlling and supervising EMS. The submission of the “administrative purposes’ defense by Comsat/Lockheed must be found to constitute the filing of false information and a fraud upon the Commission. This matter should be referred immediately to the Enforcement Bureau for appropriate action.

B. Order Fails to Reference Public Record Evidence Proving that  
Comsat Senior Officials Controlled EMS

At ¶ 12 of the Order, the Commission states its rationale for dismissing, without consideration, four of the five supplements filed by LRT in this proceeding. Each LRT pleading was properly supported with motions to accept the additional comments based on special circumstances.<sup>57</sup> The filings were all the products of LRT’s own continuing investigation and research that uncovered additional information relevant to this proceeding.

The Commission concluded that only the LRT supplemental reply of March 24, 2001, that reported that Comsat and submitted false information in denying that EMS had been a Commission licensee “merited its consideration.”<sup>58</sup> Aside from that filing, the Commission concluded that “LRT failed adequately to explain why it could not raise in its previous filings, the issues and arguments it poses, and the additional relief it requests in its supplemental replies.” Order, ¶12. The Commission also noted that, “ LRT attempts to submit information that already is a matter of public record or relates to issues not relevant to this proceeding.” Id., emphasis added. The Commission concluded that LRT “has not demonstrated that good cause exists for the Commission to accept its supplemental replies” and denied “LRT’s motions for failure to establish good cause to accept the additional filings.” Id.

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<sup>57</sup> See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1970).

<sup>58</sup> Actually, LRT demonstrated that Comsat had filed false information denying that EMS held any Commission licenses. LRT’s research of Commission data bases revealed that EMS held a license. See LRT Further Supplement including newly discovered evidence, March 24, 2001.

LRT seeks clarification of this ruling to determine whether the Commission has inadvertently or purposely disregarded or dismissed evidence, which directly incriminates Comsat in a continuing conspiracy to mislead and defraud the agency. It is noted that since September 2000, Comsat has consistently failed to refute LRT's public documentary evidence outlined below in any way, although given numerous separate opportunities to do so.

LRT's first Supplement included "public record evidence" secured from the Internet website of the Secretary of State of Florida<sup>59</sup>. Within days of filing of its Reply, LRT secured a series of documents from the Florida Secretary of State, which related directly to the representations in the Davis Declaration included in the Comsat Opposition. The documentary evidence secured by LRT established that Comsat had submitted false information to the Commission concerning its control of EMS, and thereby provided support for LRT's request for a comprehensive investigation of Comsat's representations with respect to the subsidiary.

**As noted, the Lockheed companies in their Opposition sought to explain away the past history of EMS wrongdoing reflected in the criminal and related false claim cases<sup>60</sup> as the acts of some unsupervised and, one would suppose, renegade corporate entity, far removed from oversight and control by Comsat senior officers. This position was set out in the Davis Declaration.<sup>61</sup>**

Based on the Opposition, one is expected to conclude that these Comsat "administrative" executives, who served as officers and directors of EMS, were completely oblivious to the criminal activities, which were going on all around them. Such a depiction of events simply defies logic. Most importantly, however, detailed evidence provided in the first Supplement secured by LRT from the office of the Florida Secretary of State, without question, confirmed that Comsat/Lockheed had filed false information with the Commission, designed to shield the companies and their officers from liability. The LRT filings demonstrated that it can be

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<sup>59</sup> <http://ccfcorp.dos.state.fl.us/index.html>

<sup>60</sup> At the time of the filing, Comsat was subject to a civil *qui tam* suit brought by the US Department of Justice under the Federal False Claims Act seeking \$40 million in damages, including treble damages for false claims, overcharges, theft of U.S. Government property and a conspiracy to commit systematic fraud on the government. *USA v Comsat*. Lockheed subsequently settled the action, paying the individual plaintiffs multimillion dollar damages and paying fines to the U.S. Government.

<sup>61</sup> The facts set forth in the Opposition and the Davis Declaration represented that, throughout the period 1994 to 2000, EMS operated on its own, independent of the control and supervision of Comsat. During this same period, court filings reflected that EMS continued to defraud the US Navy and others, as it had been doing possibly as early as 1982, and conducted a systematic program to conceal, destroy and alter evidence of this illegal conduct. Under the set of facts as presented by Comsat, its employees served as officers and directors of EMS "purely for administrative purposes."

proven – directly contrary to Comsat's sworn statements- that Comsat's highest ranking officials directly participated over a period of years in the direct control and operation of EMS.

In its Supplement, LRT provided the Commission with an exhibit (Exhibit 1) presenting a detailed analysis of the management and control of EMS during the period 1996-2000. The information was drawn directly from public documents (the Profit Corporation Annual Reports (Document # 465846) (herein "PCAR")) filed and executed by or on behalf of EMS with the Florida Department of State for the subject years.

The LRT analysis showed specifically that during the period in question, Comsat maintained strict control of the EMS board, extending from negative control in 1996 to majority control (3 Comsat directors to 2 EMS directors) from 1997 to 2000.<sup>62</sup> It is noted that Comsat assumed total control of the EMS Board in December 1998, at just about the same time the US Department of Justice decided to intervene in the *US v COMSAT* qui tam suit and the grand jury was empanelled to commence the criminal proceeding.

In addition, and critical to an analysis of the control of EMS, LTR discovered evidence of the exercise of ultimate control over EMS through Comsat's then president and CEO<sup>63</sup>. In December of 1998, EMS was controlled by a Board of Directors that consisted totally of three high ranking Comsat officers.<sup>64</sup>

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<sup>62</sup> Additionally, based on documents on file with the Florida Secretary of State's Office, LRT discovered that at least for a period in 1998 and 1999, Comsat controlled all EMS director positions (three at that time). The Exhibit 1 analysis provided to the Commission also revealed that key EMS officer positions were held by Comsat executives throughout the critical period in question. Comsat in fact supplied executives who functioned as chief executive, treasurer and secretary of its EMS subsidiary. Also, based on documents filed with the Florida Secretary of State, Warren Y. Zeger, former vice president, general counsel and secretary of Comsat, executed legal filings on behalf of EMS.

<sup>63</sup> Beginning in 1998, EMS became a subsidiary of Comsat General Corporation ("Comsat General"), which, in turn, was a wholly owned subsidiary of Comsat. Specifically, LRT secured documents from the Florida Secretary of State which memorialize the vote on December 15, 1998 of Comsat General, the sole shareholder of EMS, as exercised by Comsat president-CEO, Betty C. Alewine. Thus, the Comsat president-CEO was directly involved in the operation of EMS by exercising the control over Comsat as the controlling shareholder of Comsat General and EMS.

<sup>64</sup> Documents received from the Florida Secretary of State showed that the EMS Board consisted of three persons: Warren Zeger, Comsat, former vice president, general counsel and secretary, Allen E. Flower, former Comsat vice president and chief financial officer and Christopher J. Leber, former vice president – general manager of Comsat Personal Communications Division. The total domination of the EMS Board of Directors was achieved through the resignation – replacement-removal of all EMS officer-board members. As noted in Exhibit 1, the evidence in the PCAR reports shows a total of five EMS directors (3 Comsat nominees and 2 EMS nominees) in February 1998, 1999 and 2000. The additional evidence of the three man all-Comsat EMS Board in December 1998 raises the question of whether the EMS directors resigned or were removed on any other occasions over the subject period to produce total control by the Comsat directors. Only a full investigation of minute books and other related evidence can answer such questions.

The PCAR reports filed with the State of Florida for the years 1996 through 2000 reflect that Comsat executives served in key officer positions at EMS throughout these years and held sufficient directorships to control all board actions. The following documents were provided to the Commission for inspection:

- Exhibit 2 1996 Profit Corporation Annual Report (Document # 465846)
- Exhibit 4 1997 Profit Corporation Annual Report (Document # 465846)
- Exhibit 5 1998 Profit Corporation Annual Report (Document # 465846)
- Exhibit 6 1999 Profit Corporation Annual Report (Document # 465846)
- Exhibit 7 2000 Uniform Business Report (UBR) (Document # 465846)
- Exhibit 8 Articles of Amendment of Certificate of Incorporation (October 28, 1998) and filing receipt and notice to correct filing
- Exhibit 9 Articles of Amendment of Certificate of Incorporation (December 28, 1998) and filing receipt
- Exhibit 10 Action of Board of Directors in Lieu of Meeting (undated, presumed to be December 15, 1998 )
- Exhibit 11 Consent of Stockholder in Lieu of Meeting (December 15, 1998).

Additional documents filed with the Florida Secretary of State reflect the direct involvement of other senior Comsat executives, including its general counsel, with EMS.<sup>65</sup>

Two documents, a Stockholder Consent executed by Comsat's then CEO<sup>66</sup> and a companion action of the Board of Directors In Lieu of Meeting, were also located in the Florida public records. This notice established that EMS was operated by a three person board , identified as "all members of the Board of Directors."<sup>67</sup> Thus in December 1998, one month prior to the empanelling of the criminal grand jury addressing EMS criminal charges, the corporation was operated by a board that included only Comsat senior officers, raising questions as to the processes followed by Comsat in managing this company.<sup>68</sup>

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<sup>65</sup> As noted, LRT has secured copies of articles of amendment of the EMS certificate of incorporation as executed by Warren Zeger and filed with the Florida Secretary of State on October 28 and December 28, 1998 (Exhibits 8 and 9). Given Comsat's control over EMS, it would be expected that Mr. Zeger, Comsat's senior law officer, would supervise such legal filings for EMS, even though EMS was a Florida corporation and Mr. Zeger was admitted to the Bar of the District of Columbia.

<sup>66</sup> The certificate of the sole shareholder was executed by Betty C. Alewine, Comsat's then president and chief executive officer. The certificate in question shows that Comsat's senior executive as the representative of EMS's only shareholder was involved directly in the operations of the Florida subsidiary.

<sup>67</sup> The EMS Board of Directors reported in the certificate include Allen C. Flower, Christopher J. Leber and Warren Zeger, three of Comsat's senior executives.

<sup>68</sup> Somehow, the EMS Florida based directors reported to the Florida Secretary of State in March 1998 and March 1999 did not hold office in December 1998. This report raises the possibility that the EMS Florida-based directors were only elected for reporting purposes in March of each year and at all other times, Comsat officers held all EMS director positions.

The documentary evidence presented in the LRT Supplement revealed direct and continuing control of EMS by Comsat and its alter ego, Comsat General Corporation. Throughout the period 1996-2000, all EMS corporate control matters were dominated by senior officers at Comsat headquarters in Bethesda. Based on an analysis of the public record evidence, no matters were left to chance as the Board and all chief executive, treasury and corporate governance issues were controlled by Comsat nominees.<sup>69</sup>

The Commission must consider the serious issues involved with the submission of the Opposition and the Davis Declaration. In these submissions, Comsat presented a series of factual arguments, supported by a Declaration under oath<sup>70</sup>, that are directly contradicted by the documentary evidence submitted in the Supplement. However, these public record documents were apparently overlooked and/or dismissed by the Commission as “not relevant” to the matters at issue. Such a dismissal of incriminating public record evidence must be in error.

The evidence submitted in the Supplement, while drawn from public records, was, without question, relevant to the Commission’s review of Comsat’s qualifications as licensee. Apparently, the evidence was purposely or accidentally overlooked, disregarded or dismissed, as it was not addressed in the Order. Therefore, LRT requests the Commission to amend the Order to reflect the LRT public record evidence from the office of the Florida Secretary of State, which must support the finding that Comsat (as controlled by Lockheed) submitted false and misleading statements under oath concerning the direct and continuing involvement of its former senior executives in the operations of EMS. This matter should be referred immediately to the Enforcement Bureau for appropriate action.

Again, in this post-Enron time, government overseers must be expected to go the extra mile to thoroughly investigate any and all evidence of corporate fraud and corruption. The LRT public record evidence proves that Comsat and Lockheed have filed false information in an effort to mislead the Commission concerning the corporate governance and control of EMS and thereby obstruct justice.

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<sup>69</sup> In addition, there is documentary evidence that the EMS corporate legal work (i.e. that related to corporate governance and control) was supervised and administered by Warren Zeger, general counsel of Comsat.

<sup>70</sup> It is noted that the Declaration was submitted by an attorney who himself is included as an EMS officer-director in the PCAR reports and continued on the Board according to the last filed PCAR report (see fn. 6, *supra*.). The failure to disclose declarant’s direct involvement as a Board member and officer in the Declaration raises a number of very serious questions, including lack of candor and conflict of interest, which should be addressed by the Commission.



C. The Order Fails to Reference Evidence that Comsat Misled the US Attorney  
By Misrepresenting the FCC's Review of EMS Criminal Activities

LRT submitted a Second Supplement, which raised additional serious questions related to Comsat's continuing misrepresentations. Specifically, LRT submitted a letter received from Hon. Donna A. Bucella,<sup>71</sup> United States Attorney for the Middle District of Florida, located in Tampa Florida. ("US Attorney's Letter")<sup>72</sup>, concerning Comsat's relation to the EMS criminal litigation.

In the letter, the US Attorney outlined her fundamental assumptions with respect to the Commission's review of Comsat's operations, including those of EMS, in the context of the Lockheed merger proceeding. In particular, the US Attorney's Office clearly assumed that it had been necessary for "representatives of Comsat to explain to the regulator, [the Commission], Comsat's role – if any- in the criminal conduct which is the focus of the EMS plea agreement." U.S. Attorney's letter, emphasis added. The letter went on to note that "[c]ertainly the FCC was entitled to this explanation, in the form of affidavits, before it considered permitting Comsat to merge with Lockheed Martin Corporation." (emphasis added)

Notwithstanding the position taken by the Justice Department reflected in the US Attorney's Letter, it is LRT's understanding, based on the Commission's Order and pleadings submitted by Comsat and the Lockheed companies in this proceeding, that no such "explanation" in the form of affidavits or any other type of presentation was made to the Commission, concerning Comsat's control of EMS before the issuance of the non final order approving the merger. Based on the recitation of events set forth in the Order, Comsat first forwarded information concerning the EMS criminal matter to the Commission on August 21, 2000, nearly a month after the vote approving the merger.

The US Attorney's Letter submitted in the Second Supplement raised additional serious issues of misrepresentation and lack of candor<sup>73</sup> on the part of Comsat. Based on the position

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<sup>71</sup> As noted in the letter, Ms. Bucella's office was charged with the responsibility of investigating and subsequently entering a Plea Agreement with Comsat's Florida subsidiary, EMS.

<sup>72</sup> As reported to the Commission, LRT was in communication with US Attorney Bucella, and Assistant U.S. Attorney Ernest F. Pucello, head of the organized crime task force for the Middle District of Florida, with respect to various issues concerning the EMS prosecution, including the matters which were raised the LRT Petition for Reconsideration, Reply and first Supplement.

<sup>73</sup> In the Second Supplement, LRT requested that the Commission notice an evidentiary hearing with respect to the issues raised in the Petition and its supplemental pleadings.

taken by the US Attorney, it fell to the Commission to inquire whether Comsat/Lockheed or EMS misrepresented to the US Attorney's Office that information had been presented to, and an inquiry had been conducted by, the Commission concerning the operations and control of EMS by Comsat, prior to the approval of the Comsat-Lockheed merger.

The US Attorney's Letter sets forth the erroneous understanding that Comsat "no longer exists as a legal, corporate entity." LRT communicated with the US Attorney to correct this misunderstanding.<sup>74</sup> However, here again, inquiry must promptly be made to determine whether Comsat properly and correctly informed the US Attorney as to the true nature of the merger transaction,<sup>75</sup> and the continued corporate status of Comsat.

With respect to the dismissal of LRT evidence referenced in the Order, the Bucella letter does not meet the criteria established by the Commission for rejecting evidence contained in the LRT supplements. The U.S. Attorney's Letter, which was a private not a public document, was sent to LRT after the submission of its Reply. LRT had no control over the timing of the letter's receipt. Obviously, its contents, which raise additional most serious issues concerning obstruction of justice and fraud on the part of Comsat (as controlled by Lockheed), are relevant to the present proceeding.

Since the Second Supplement does not meet the criteria established by the Commission for dismissing LRT evidence, it appears that the said submission was erroneously overlooked, rejected or dismissed. LRT requests that the Order be amended to consider fully, and include a complete discussion of, this vital evidence. Also, this matter should be referred immediately to the Enforcement Bureau for appropriate action.

Further, LRT repeats its request that the Commission notice a full investigation and/or evidentiary hearing, including representatives of the US Attorney's Office, Middle District of

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<sup>74</sup> LRT has provided the following information to the US Attorney: "On March 17, 2000, Congress passed the Open-Market Reorganization for the Betterment of International Telecommunications Act (the ORBIT Act), which eliminated the ownership restrictions in the Communications Satellite Act that prevented Lockheed Martin from acquiring control of Comsat. Thus, following the merger, by law, Comsat, as an entity, continues as a subsidiary of Lockheed, with its pre-existing rights and subject to its liabilities, including, among other things, the continuing *qui tam* litigation (*United States ex rel. Beattie et al v. Comsat Corporation et al Case No. 1996CV00966*)." Letter of William L. Whitely to US Attorney Donna A. Bucella, Oct. 11, 2000.

<sup>75</sup> For some reason, as yet unclear, the US Attorney's Office came to the conclusion that the Lockheed-Comsat merger resulted in Comsat ceasing to exist as an independent, corporate entity. It is logical to posit that the US Attorney's Office reached its specific position, based on information provided by Comsat. If so, this would involve additional issues of fraud and misrepresentation to another US Government department.

Florida, to determine the extent to which Comsat's filings with the Department of Justice misrepresented information concerning the Lockheed-Comsat merger and provided false information concerning the Commission's knowledge of EMS criminal activities and whether the conduct of Comsat and Lockheed and their officers constituted obstruction of justice.<sup>76</sup>

#### D. Order Includes Incorrect Effective Date of EMS Plea Agreement

The Commission states at ¶ 14 of the Order as follows:

"On August 3, 2000, EMS entered a plea of guilty in the United States District Court for the Middle District of Florida for obstructing federal audits in violation of 18 U.S.C. § 1516.<sup>77</sup>"

This is a misleading reference to the effective date of the criminal plea. It was on July 17, 2000 that EMS executed the plea agreement with the US Attorney for the Middle District of Florida<sup>78</sup>. This action confirmed the guilty plea of the Comsat subsidiary, and set in motion the series of steps that followed, culminating in the Court's entry of the criminal judgment against EMS on November 6, 2000.<sup>79</sup>

The Commission is requested to correct ¶14 to reference the date of July 17, 2000, the date of execution of the criminal plea agreement, as the operative date, fixing the criminal liability of EMS.

#### E. Order Fails to Reference Comsat's Violation of Rule 1.65.

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<sup>76</sup> It is noted that based on the positions set forth in the US Attorney's Letter, LRT requested in the Second Supplement that the Department of Justice and the US Attorney's Office for the Middle District of Florida be added as a party to this proceeding. LRT noted that it was critical that the Commission ascertain the information made available to the US Attorney's Office, including, in particular, any representations made by Comsat with respect to this proceeding and the assumptions and underlying understandings of the US Attorney's Office concerning Comsat's control of EMS.

<sup>77</sup> *United States v. Electromechanical Systems, Inc.*, M.D. Case No. 8.00-CR-253-T-27A (M.D. Fla. 2000).

<sup>78</sup> See *Tampa Tribune*, July 18, 2000 "Largo contractor admits to fraud", <http://archive.tampatrib.com/>; *Washington Post*, July 25, 2000; Page E4 [http://nl12.newsbank.com/nl-search/we/Archives?p\\_action=list&p\\_topdoc=11](http://nl12.newsbank.com/nl-search/we/Archives?p_action=list&p_topdoc=11)

<sup>79</sup> *Tampa Tribune*, Nov. 7, 2000. "Company told to pay back government for overbilling"

Also in ¶ 14, the Commission states that, “On August 21, 2000, Comsat reported the EMS plea agreement to the Commission as part of amendments to the pending Comsat applications.<sup>80</sup>” The Commission should clarify that this action by Comsat came more than 30 days following July 17, 2000, the day EMS executed the criminal plea agreement with the Department of Justice,<sup>81</sup> fixing the company’s criminal liability.

The failure of Comsat to file an amendment to its Form 312 applications within the 30 day period required by Rule 1.65 constitutes a direct violation of the Commission’s rules<sup>82</sup>. The Order should be amended to register this rule violation on the part of Comsat/Lockheed. This matter should be referred immediately to the Enforcement Bureau for appropriate action.

F. Order Erroneously Fails to Sanction Comsat’s Submission of  
(a) **False Information in its Form 312  
Satellite Station Transfer Application**

In ¶16 the Commission rejects LRT’s allegations that Comsat has failed to comply with Commission rules in not reporting the EMS criminal inquiry by stating:

“ Moreover, no application filed in this proceeding by or on behalf of Comsat required such specific disclosure of pending criminal matters prior to conviction. Consequently, we find no justification to grant LRT’s request for reconsideration based upon Comsat’s failure to disclose the pendency of the criminal investigation involving EMS. Order, ¶ 16, fn omitted, emphasis added.

In support of the above stated position, the Commission includes the following double-numbered footnote 29:

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<sup>80</sup> Letters to the Secretary, Federal Communications Commission, from Raymond G. Bender (Counsel for Comsat Corporation) accompanying amendments to earth station applications: 1) SES-MOD-19991115-0215700431; (2) SES-LRC-1998021700202 *et seq.*; (3) SES-MOD-2000313-00409 *et seq.*; (4) SES-LRC-19990330 *et seq.* and (5) SES-MOD-19990108-00020, dated August 21, 2000.

<sup>81</sup> There was also another plea agreement in the EMS criminal case executed after August 21, 2000 in which a former EMS executive agreed to cooperate “in the continuing criminal proceedings involving the company.” St. Petersburg *Times*, Aug. 25, 2000, [http://www.sptimes.com/News/082500/Business/Business\\_today.shtml](http://www.sptimes.com/News/082500/Business/Business_today.shtml) . Apparently, Comsat/Lockheed filed no information with the Commission by way of amendment, attorney’s letter or otherwise, concerning this continuing investigation of EMS, constituting an independent rule violation. This matter should be referred to the Enforcement Bureau.

<sup>82</sup> Comsat and Lockheed maintain that they “voluntarily” filed information concerning the EMS criminal plea agreement. This is erroneous. The fact remains that Comsat, Lockheed and EMS are all licensees and therefore are required to file information concerning criminal convictions, as such directly impact character qualifications. The amended Order should cite this erroneous statement by the companies, and confirm the affirmative obligation of all licensees to file information concerning both pending criminal investigations and convictions.

See FCC Form 312, Application for Space and Earth Station Authorizations, requires an applicant or any party directly or indirectly controlling the applicant to inform the Commission of a conviction of a felony in any state or federal court. Order. fn 29 [first]

Although not so identified, the above footnote reference is to question 37 of FCC Form 312. What the Commission erroneously has failed to reference in the Order is the declaration required of Comsat and all applicants under question 39 of Form 312, which reads as follows:

39. Is the applicant, of any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceeding (sic) two items [questions 37 and 38 related to criminal matters and anti-competitive conduct]. If yes, attach as an exhibit an explanation of the circumstances. FCC Form 312, ques. 39, emphasis added.

The Commission's blanket approval of Comsat's failure to report the pending EMS criminal matter as set forth in the Order is in error. Clearly, from the date Comsat and Lockheed first filed applications for the license transfer grants, Comsat was required to include in its multiple Form 312 applications under question 39 a full report concerning the criminal proceeding then pending before the US District Court for the Middle District of Florida, involving its Florida licensee subsidiary. The grand jury was empanelled to address the EMS criminal matters in January 1999, and therefore, Comsat was required under FCC Form 312, question 39, to file full information concerning this pending criminal matter in all of its original transfer applications and any amendments thereto. The Commission's finding that Comsat was not required under any application to file information concerning the pending criminal matter was in error.

Comsat's actions in failing to include information in its pending applications must be seen as part of its continuing plan to conceal information concerning the EMS criminal activity. This conduct constitutes intentional misrepresentation and fraud upon the Commission.

The Commission should correct the Order to reflect the true facts. Comsat was obligated to include full information concerning the ongoing EMS criminal proceeding under question 39 to FCC Form 312. It failed to do so in any of its applications, constituting multiple and continuing violations of the rules. The Order should be amended to include these serial violations, which occurred with respect to all Form 312 Applications filed by Comsat and amendments filed by Comsat and Lockheed in this proceeding. This matter should be referred immediately to the Enforcement Bureau for appropriate action.

G. Order Should Be Corrected to Explain Commission's Failure to Refer Comsat Violation to Enforcement Bureau Prior to Expiration of Statute of Limitations

In the second double-numbered footnote 29, the Commission finds Comsat guilty of filing false information with the agency as follows:

We note that Comsat initially represented that EMS was not a Commission licensee. Comsat concedes that it erred in this regard and that EMS has been, since September 1997, the licensee of a station in the Marine Radio Service. The Commission relies heavily on the representations of its licensees and expects all licensees to deal truthfully and accurately with the Commission at all times. Order, fn. 29 [second], emphasis added.

The Commission stated that it found no basis “at this time” to question Comsat’s basic qualifications or to grant LRT’s request for reconsideration because of this “incident.” Id. The Commission did refer the matter to the Enforcement Bureau to determine its non-compliance with Section 1.17 of the Rules. However, the Commission observed that “ in light of the fact that the statute of limitations for forfeiture has passed,” such further action would necessarily be of a limited nature. Id.

LRT filed its Petition in August 2000, and its Supplement related to Comsat’s false license false declaration in March 2001. No reason is offered in the Order to explain why the staff delayed nearly 2 years, until July 2002, to draft its response to the LRT Petition. As noted in the ruling, this delay was so long as to extend beyond the statute of limitations for forfeitures, thereby foreclosing, in the Commission’s view, any possibility of subjecting Comsat/Lockheed to appropriate fines . The question naturally arises as to the reasons that occasioned this inordinate delay, including negligence or malfeasance, or possibly a deliberate plan to protect Comsat/Lockheed from forfeiture liability.

The last possibility is raised as the result of disturbing information, which was reported to LRT by an industry lobbyist some months ago, and which, in turn, was previously communicated to the Commission staff. In an earlier letter to the Commission staff, LRT expressed its concern over a report that a Commission staff member had stated that the agency could be expected to delay its ruling on the LRT Petition “indefinitely.”<sup>83</sup> As LRT stated in its earlier letter and restates now, it is of critical importance to ascertain whether the staff purposely delayed its review of the LRT Petition. This is especially the case in view of the Commission’s failure to act prior to the expiration of the statute of limitations as referenced in the Order.

Furthermore, given the fact that the rule violation in question is based on Comsat and Lockheed’s filing of false information, it would appear that the statute of limitations should run from the date that the Commission ascertained that the companies had participated in this

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<sup>83</sup> The lobbyist stated that the staff had remarked that it was likely that the Commission would never rule on the LRT Petition.

fraudulent misrepresentation. Acts of fraud generally toll the running of statutes of limitation. The Order should stipulate the facts related to the Commission's determination of the Comsat/Lockheed rule violation, and time estimates it used in computing the applicable statute of limitations related to imposing forfeitures against Comsat/Lockheed.

LRT must also question the manner in which the Commission utilized a footnote in the Order to record its finding of Comsat's liability for filing false information with the Commission. This must be regarded as a highly unusual procedure on the part of the Commission, which practically concealed this serious finding against Comsat/Lockheed.<sup>84</sup> The Commission was confronted with LRT's evidence that Comsat filed false information, and Comsat's admission of its guilt. Yet, the Commission departed from its usual course in seeking to publicize all of its efforts to enforce the highest standards of veracity on the part of its licensees, by referencing Comsat's admitted rule violation in a footnote.

The procedure of referencing such a serious rule violation in a footnote is seen by LRT as far different from other past actions on the part of the Commission. For example, LRT notes the recent \$3.6 million fine which the Commission imposed against SBC Communications Inc. In that case, SBC did not admit to wrongdoing related to the alleged submission of false information in Commission forms.<sup>85</sup> However, the company was required to pay a sizeable fine and execute an extensive consent decree, resulting in continued monitoring of its future reporting. This action in turn was widely publicized by the Commission.

In the Comsat case, the company- a government sponsored enterprise- fully admitted to filing false information with the Commission in an effort to disguise the licensee status of its subsidiary. LRT discovered the fraud. Yet Comsat was not fined (as the statute of limitations has run) and the referral to the Enforcement Bureau was hidden away in a double numbered footnote. Clearly, a government sponsored enterprise such as Comsat, mandated by law to operate in the public interest<sup>86</sup>, should be held to the highest ethical and legal standards. Also,

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<sup>84</sup> Actually, given the fact that the Comsat sanction was included in a double-numbered footnote, it can be assumed that the ruling was added at the last edit as a way to obscure or hide the anti-Comsat ruling. An obvious effort to avoid press attention to the anti-Comsat ruling was also reflected in the following steps: the ruling was included in a series of three other orders rejecting LRT petitions against Comsat and Lockheed; was issued on Friday afternoon, July 5, in the middle of the July 4<sup>th</sup> holiday weekend ; and was not addressed in an accompanying Commission press release. These circumstances raise serious issues of favoritism toward Comsat/Lockheed and bias against LRT.

<sup>85</sup> See FCC Order, 02-153 and press release dated May 28, 2002, [http://www.fcc.gov/eb/News\\_Releases/DOC-222865A1.html](http://www.fcc.gov/eb/News_Releases/DOC-222865A1.html)

<sup>86</sup> See Satellite Act, 47 USC § 701.

its rule violations should warrant the sternest of rebukes by the supervising agency to set the proper and necessary example for all other private licensees. This has not been the case here. Comsa/Lockheed have been accorded what must be regarded as unusually favorable treatment. A full discussion and explanation of these facts should be included in the Order.

LRT requests that the Order be amended to address the reasons why the Commission delayed nearly two years to rule on the LRT Petition, extending beyond the expiration of the statute of limitations for forfeitures. Also, LRT requests that the Commission include an explanation as to the reason why the Comsat/Lockheed outright admission of filing false information was relegated to being included in a footnote and was not reported prominently in the Order as in cases such as SBC, referenced above, where the licensee did not admit to filing false information with the Commission. Finally, the Commission should address the reasons why Comsat and Lockheed are not being held to the highest legal, ethical, public interest standards as an example to the other private sector licensees.<sup>87</sup>

## **2. H. Order Should Be Corrected to Cite Comsat for Filing an Invalid Amendment**

Comsat's action in filing its attorney letter "amendment"<sup>88</sup> on August 21 clearly reflected the fact that Comsat had come to realize- too late as it turned out- its obligation to file full information concerning the EMS criminal proceeding with the Commission. However, based on available information, it appears that the attorney in question was not authorized to file an amendment on behalf of Comsat or Lockheed in substitution for a corporate officer.

Under applicable Commission rules and policies, The amendment should therefore be found to be invalid. The Order should be amended to so state. This matter should be referred immediately to the Enforcement Bureau for appropriate action.

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<sup>87</sup> If Comsat and Lockheed are permitted to file false information and not face severe, widely publicized sanctions, this can only have a detrimental effect on the Commission's continuing efforts to enforce strict rules compliance standards on the part of its licensees.

<sup>88</sup> It is noted that under the Commission's rules (Part 1) and the filing and certification instructions to Form 312, in the case of corporations, amendments to FCC applications are required to be signed by officers. Attorneys can file only where officers are absent and unavailable to execute the amendment. Based on the information included in the Commission's Order, it appears that attorney Bender's letter did not constitute a properly filed amendment. This would constitute separate grounds for rejecting Comsat's proffered filing. This would also constitute an additional rule violation by the companies.



## **I. Order Should Be Corrected To Remove Reference to Unsigned Pleadings**

The Order at footnote 13 includes a statement by the Commission concerning LRT's alleged failures to comply with its rules. The statement is in error.

The Commission states as follows: "LRT has ignored procedural requirements in our rules, including subscription and verification requirements and page limits. Some pleadings filed by LRT are unsigned. See 47 C.F.R. § 1.52 (2001). This statement, based on Comsat's allegations, is erroneous.

LRT did not ignore the Commission's rules. All of LRT's pleadings were properly signed. Conformed copies (unsigned) were forwarded to Comsat/Lockheed, a fact used as the basis of the companies' unsupported allegation against LRT. Furthermore, while LRT pleadings did exceed page limitations, in each and every case, as noted by the Commission, a proper motion was submitted by LRT seeking rule waivers to admit the pleadings. Thus, in no instance did LRT "ignore" the Commission's procedural rules.

The erroneous and unsupported reference to LRT's alleged non-compliance with the Commission rules should be corrected and the said footnote 13 deleted from the Order.

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## **4. J. Violation of Ex Parte Rules**

The Order at footnote 21 states that the Commission received a letter on October 3, 2001 from a then corporate attorney for LMGT.<sup>89</sup> The letter, according to the footnote, provided certain information concerning EMS. This letter was not served upon LRT as a party to this proceeding. Such a communication with the Commission is regarded by LRT as a violation of the ex parte rules.

Further, it is noted that this was third violation of ex parte rules by the Lockheed companies raised by LRT in this proceeding. To date, the Commission has failed to rule on LRT's earlier ex parte complaints against Lockheed/Comsat counsel. It appears that counsel's failure to comply with applicable Commission rules has, over time, come to reflect an outright disregard for the Commission's procedural requirements on the part of Comsat/Lockheed

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<sup>89</sup> Letter from Keith H. Fagen, Lockheed Martin Corporation to Secretary, FCC, dated October 3, 2001.

attorneys.<sup>90</sup> This matter should be referred immediately to the Enforcement Bureau for appropriate action.

### 3. LRT's Requested Corrections and Clarifications Are in the Public Interest

The Commission correctly states that “[w]hile the *Character Policy Statement* is not specifically applicable to Comsat or EMS, the Commission has recognized that prior misconduct can have a material bearing on qualifications for non-broadcast as well as broadcast licensees and has assessed the relevance of such matters in non-broadcast license cases consistent with the principles set forth in the character policy statement.<sup>91</sup> “ However, it has concluded that “the EMS matter is not sufficiently compelling to reconsider and either rescind or impose conditions on the Comsat-Lockheed Martin merger.” This conclusion is based solely upon the finding that Comsat filed false information with regard to the EMS license.

This Motion references a number of additional material rule violations by Comsat, including, among others, filing false information with regard to the involvement of its senior management in controlling EMS, its repeated failure to report the pending criminal prosecution in its series of Form 312 applications and amendments; and its failure to timely report the execution of the criminal plea agreement with the Department of Justice. This Motion fully supports a finding by the Commission that this illegal misconduct is sufficiently compelling to reconsider the merger Order and either rescind or impose conditions on the Comsat-Lockheed Martin merger.

The Commission correctly states that its 1990 modification of the policy addresses the relevant non-FCC misconduct that the Commission, at its discretion, may consider in licensing decisions.<sup>92</sup> Under this policy, the Commission will consider a felony conviction as relevant to a licensee’s character qualifications and an indication of its propensity to obey the law.<sup>93</sup> The Commission also correctly takes into consideration mitigating factors, such as willfulness,

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<sup>90</sup> Contemporaneously with this filing, LRT is submitting a Motion to Strike in the Lockheed –Intelsat transfer proceeding (IB Docket 02-87), which includes yet another complaint for ex parte violations by Lockheed attorney Fagen.

<sup>91</sup> *In re MCI Telecommunications Corp., Memorandum Opinion and Order*, FCC 99-110, 14 FCC Rcd 11077 (1999).

<sup>92</sup> *Modified Character Policy Statement* at 3252.

<sup>93</sup> *Id.*

frequency, correctness, and seriousness of the misconduct as well as efforts to remedy the wrong and overall record of compliance with Commission rules and policies.<sup>94</sup>

The Commission has initially concluded that while the EMS matter entailed non-FCC misconduct by a company, no other credible information has been provided to detract from Comsat's record of compliance with FCC rules and policies.<sup>¶19</sup> However, the matters raised in this Motion, clearly reflect a series of actions on the part of Comsat constituting serious violations of the Commission's rules in an effort to conceal involvement of the company and its officers with EMS and its criminal activities. As shown, nearly two years ago, Comsat set about a pattern of conduct which was designed to conceal the EMS criminal matter, and only the continuing investigation and detailed research of LRT has led to the exposure of this illegal cover-up.

Without question, Comsat was required from the time it originally submitted its Form 312 Transfer Applications to provide the Commission with a detailed report of the then pending EMS criminal proceeding. Subsequently, it was required to file a proper amendment within 30 days of the execution of the criminal plea agreement by EMS. Comsat failed to comply with the applicable Commission rules and regulations. Comsat next embarked on a course of obfuscation and deception, as it (i) filed false information with the Commission, with the purpose to conceal the licensee status of EMS, (ii) created a subterfuge – illegal under Florida law-claiming its management served as officers and directors only for “administrative purposes,” and then (iii) submitted information under oath which falsely denied the direct involvement of senior Comsat officials, including its president-CEO, general counsel and CFO, in controlling EMS.

Further, as discovered through diligent investigation by LRT, Comsat officials misrepresented information concerning the Commission's review of EMS criminal activities to the US Attorney, expanding this web of deception, and further obstructing the proper administration of justice. Comsat and Lockheed have admitted to filing false information and, based on evidence presented herein, have participated in a course of conduct designed to conceal and/or misrepresent facts to the Commission. Such conduct on the part of licensees cannot be tolerated.

Over the years, in a continuing series of rulings, the Commission has observed that fraud "is a subject area the Commission has traditionally considered to be pertinent to its evaluation of a licensee's character." *Decision*, 13 F.C.C.R. at 15,038. Commission regulations

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<sup>94</sup> *Id.*

specifically forbid applicants from "mak[ing] any misrepresentation or willful material omission bearing on any matter...." 47 C.F.R. § 1.17; see also 47 U.S.C. § 312(a)(1). The Commission has found that a licensee's complete candor is important because "effective regulation is premised upon the agency's ability to depend upon the representations made to it by its licensees." *Leflore Broad. Co. v. Commission*, 636 F.2d 454, 461 (D.C. Cir. 1980); see also *Character Policy*, 5 F.C.C.R. at 3253. Also, it is well recognized that the Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency. See *Swan Creek Communications, Inc. v. Commission*, 39 F.3d 1217, 1221-24 (D.C. Cir. 1994); *Garden State Broad. Ltd. v. Commission*, 996 F.2d 386, 393-94 (D.C. Cir. 1993).

Further, under section 1.17 of the Commission's rules, "[n]o applicant ... shall in ... any ... written statement submitted to the Commission ... make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission."<sup>95</sup> The Commission has defined misrepresentation as an "intentional misrepresentation of fact intended to deceive"<sup>96</sup> and has concluded that an intent to deceive is an essential element of a misrepresentation finding.<sup>97</sup> The Commission has also stated that intent is a "factual question that may be inferred if other evidence shows that a motive or logical desire to deceive exists . . ."<sup>98</sup> In the present case, one is presented with both the admission of filing false information and evidence of a continuing pattern of conduct involving repeated failures to disclose information to the Commission and other require *parties*. The ultimate facts are often proved through circumstantial evidence, as such evidence may be the only way of proving knowledge or intent.<sup>99</sup>

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<sup>95</sup> 47 C.F.R. § 1.17.

<sup>96</sup> *Silver Star Communications-Albany, Inc.* 3 FCC Rcd 6342, 6349 (Rev. Bd. 1988).

<sup>97</sup> See *Swan Creek Communications v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994).

<sup>98</sup> *Black Television Workshop*, 8 FCC Rcd 4192, 4198, n. 41 (1993), recon. denied, 8 FCC Rcd 8719 (1993), rev. denied, 9 FCC Rcd 4477 (1994), aff'd sub nom. *Woodfork v. FCC*, 70 F.3d 639 (D.C. Cir. 1995) (affirming ALJ's finding that the record encompasses documents containing misrepresentations).

<sup>99</sup> *Ned N. Butler and Claude M. Gray, D.B.A. The Prattville Broadcasting Co., Prattville, Ala.*, Memorandum Opinion and Order, 5 FCC 2d 601, 603-604 (Rev. Bd. 1966) (internal citations omitted). In criminal cases, where the burden of proof is higher, the D.C. Circuit has recognized that "[i]ntent may, and generally must, be proved circumstantially . . .," *United States v. Jackson*, 513 F.2d 456, 461 (D.C. Cir. 1975) (footnotes omitted), and has stated that it does not distinguish between "direct and circumstantial evidence in evaluating the sufficiency of the evidence." *United States v. Lam Kwong-Wah*, 924 F.2d 298, 303 (D.C. Cir. 1991), cert. denied, 506 U.S. 901, 113 S.Ct. 287, 121 L.Ed.2d 213 (1992).

The Commission correctly considers misrepresentation to be a serious violation,<sup>100</sup> as its entire regulatory scheme ``rests upon the assumption that applicants will supply [the Commission] with accurate information."<sup>101</sup> For this reason, applicants before the Commission are held to a high standard of candor and forthrightness.<sup>102</sup>

In the instant case involving Comsat, the Commission is faced with a government sponsored enterprise that has fully admitted that it filed false information in denying that its subsidiary held a Commission license<sup>103</sup>. Also, Lockheed, the country's largest defense contractor and parent of Comsat, joined in the defense of this rule violation by offering the explanation that it is too large an organization to be able to effectively monitor all licenses it may hold at a particular time.<sup>104</sup> This conduct is unacceptable on the part of any licensee, but clearly is beyond the pale for a government sponsored enterprise such as Comsat, and the nation's largest defense contractor, both of which are mandated to comply with the highest ethical and legal standards, to take part in such deceptive practices.

Clearly, based on the continuing misconduct of Comsat and Lockheed, the public interest will be served by correcting, clarifying and rescinding and retracting the Order as requested in this Motion. This is especially the case in view of the recent attention directed to corporate fraud and deception by the White House and the Congress, following the Enron and related scandals. All government regulators must be vigilant, and aggressively search out and

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<sup>100</sup> Fox Television Stations, Inc., Memorandum Opinion and Order, 10 FCC Rcd 8452, 8478, para. 60 (1995).

<sup>101</sup> Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1210, para. 58 (1986) (subsequent history omitted) ("Character Policy Statement"). "The integrity of the Commission's processes cannot be maintained without honest dealing by regulated companies." See *id.*, 102 FCC 2d at 1211, para. 61. "Regardless of the factual circumstances of each case, misrepresentation to the Commission is always an egregious violation." Forfeiture Policy Statement, 12 FCC Rcd at 17098, para. 21. The Commission may treat even the most insignificant misrepresentation as an event disqualifying a licensee from further consideration. Character Policy Statement, 102 FCC 2d at 1210, para. 60. See also Forfeiture Policy Statement, 12 FCC Rcd at 17098, para. 21.

<sup>102</sup> *WHW Enterprises Inc., v. FCC*, 753 F.2d 1132, 1138 (D.C. Cir. 1985) (upholding Commission sanctions against license applicant for misrepresentation); *Sea Island Broadcasting Corp. of S.C.*, 60 FCC 2d 146, 147, para. 3 (1976) ("The Commission insists on complete candor from its licensees and where . . . that candor has been found lacking in response to official Commission inquiries, the Commission has terminated the license."), *aff'd*, *Sea Island Broadcasting Corp. of S.C. v. Federal Communications Commission*, 627 F.2d 240 (D.C. Cir. 1980).

<sup>103</sup> It should not be overlooked that Comsat's motivation here was to limit the corporation's exposure to liability for failing to report the criminal conduct of a subsidiary holding a communications license. By identifying EMS as a non-licensee, liability could have been avoided by Comsat/Lockheed.

<sup>104</sup> See Opposition.

sanction all illegal conduct and corruption on the part of corporations and their senior officers. This is just such a case.

#### 4. Request For Retraction of Ruling Infringing LRT's Constitutional Rights

In the Order at ¶ 19, the Commission referenced Comsat/Lockheed's claims that LRT and/or its members' primary aim in bringing the instant action is "to harass Comsat and its successors and/or assigns by abusing the Commission's processes in order to cause Comsat and its successors and/or assigns to capitulate to LRT and/or its members' demands for compensation relating to a long ago corporate dispute<sup>105</sup> involving the LRT members and Comsat." The Commission then undertook the unusual and highly prejudicial action of issuing the following warning:

We hereby expressly warn LRT and/or its members that they may face summary dismissal of their pleadings or the alternative procedure of prior screening of their pleadings should they file abusive or harassing pleadings with the agency. Id.

The findings by the Commission are unfounded, erroneous and highly prejudicial. Indeed, they are based on the representations of two companies that had admitted to filing false information with the Commission. Most importantly, the admonition violates the fundamental Constitutional rights of LRT and its members. Accordingly, LRT petitions for the immediate retraction of ¶ 19 in its entirety.

First and foremost, the LRT filings against Comsat have from the very first had the sole purpose of seeking the intervention of the Commission to sanction illegal conduct on the part of Comsat, and later Lockheed. It is also noted that not all of the actions to which LRT has been a party were commenced by LRT. Indeed, two of the key proceedings – declaratory relief actions involving Comsat's compliance with the Satellite Act- were commenced in 1996 by the Commission on its own motion, following the submission of letters of inquiry by LRT.<sup>106</sup> Such Commission actions, a highly unusual circumstance, clearly reflected the staff's judgment that the allegations raised by LRT against Comsat were material, substantive and serious. Further,

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<sup>105</sup> As the Commission has been informed in the Lockheed-Intelsat transfer proceeding (IB Docket No. 02-87), the referenced "corporate dispute" continues. LRT has secured a critical affidavit establishing that the "long ago" Comsat orchestrated law suit was based upon fraud. Actions are being pursued by LRT on the state and federal level to annul prior judgments and sanction those companies and officers and agents responsible for perpetrating the fraud upon the courts.

<sup>106</sup> See *In the Matter of Comsat Corporation, et al., Memorandum Opinion and Order*, FCC 97-422, 13 FCC Rcd 2714, 2726 ("Consolidated Order")(1998), *recon. denied*, 15 FCC Rcd 19,516 (2000).

other actions in which LRT has participated were brought by customers and competitors of Comsat.<sup>107</sup>

Indeed, if any party is to be accused of abuse of legal process, it must be Comsat. A review of court records will reveal that over its final ten years, Comsat, often experiencing a cash shortages, regularly misused the courts in order to delay or even avoid paying just bills, break contractual arrangements, intimidate or coerce parties (including its own shareholders) and other improper purposes.<sup>108</sup>

In fact, each and every petition filed by LRT has been based firmly on its conclusions, following diligent research and study, that Comsat and Lockheed were engaged in conduct constituting serious violations of federal law and Commission rules and policies.

For over six years, LRT has sought the Commission's intervention against Comsat and later Lockheed. Over this period, LRT has found that its pleadings have been required to remain on file literally for years before being reviewed and adjudicated by the Commission. Other requests have been summarily rejected by the staff.<sup>109</sup> Indeed, the very Order at issue relates to a Petition for Reconsideration filed nearly two years ago by LRT. Furthermore, one LRT action, a rule making petition seeking the adoption of a rule to prohibit Comsat<sup>110</sup> from continuing its open channel distribution of pornographic movies to one million hotel rooms throughout the US, has remained on file before the Commission since December 29, 1995, without any agency action<sup>111</sup>.

It is true that LRT members have certain commercial disputes with Comsat and Lockheed, but under the circumstances obtaining in this case, this fact should not and cannot

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<sup>107</sup> Id.

<sup>108</sup> Comsat has sued customers (NewsCorp), competitors (PanAmSat, Stratos Communications), business partners (LRT), its shareholders (1997 shareholder proxy action), its officers (action against former president Bruce Crockett) and the Commission. The company in 1999 even threatened to sue the U.S. Congress in the event it passed legislation mandating the renegotiation of its satellite transponder sales agreements.

<sup>109</sup> Over the last two years, successive requests for subpoenas to access Comsat and Lockheed documents filed by LRT with the Chief of the International Bureau have been summarily rejected.

<sup>110</sup> Comsat spun off the stock of its entertainment businesses, including the movie distribution business in June 1997.

<sup>111</sup> Ten days ago, LRT forwarded a letter to Chairman Powell and the other Commissioners requesting that attention be given to LRT's pending hotel movie rule making petition, which seeks a rule requiring that open access to such indecent movies previously distributed by Comsat be restricted through "lock-box" channel selectors so as to protect American children and families.

be considered by an impartial administrative agency such as the Commission as it reviews the allegations at issue. Absent evidence to the contrary, the motivations of LRT should not and cannot be a relevant factor in the Commission's decision making process, as it reviews the serious allegations of wrongdoing raised against Comsat and Lockheed by LRT. Such motivations, absent proof to the contrary, cannot be cited in support of an ad hoc admonition to forestall the continued exercise of fundamental Constitutional rights by LRT members.

Having said this, LRT is most concerned with the language of the Commission's Order. As an initial matter, one is confronted with the Commission's use of derogatory language in referring to LRT and its members. At ¶ 9, the Commission includes a reference to "LRT and its confederates." This represents a direct attack against the good name, reputation and standing of LRT and its members. This language is patently offensive and, in LRT's view, reflects a clear anti-LRT bias and bent of mind on the part of the Commission.

Furthermore, and of primary concern, we have the entire contents of ¶ 19 to consider. Here, the Commission accepts the baseless and unsupported allegations of Comsat and Lockheed that LRT's actions in seeking the independent intervention of the agency should be found to constitute a misuse of Commission process to harass the companies. The Commission then has included an admonishment of LRT—warning it against the submission of further pleadings. What is truly incredible to LRT is the fact that the Commission voted to undertake this unusual, offensive and damaging action against LRT, notwithstanding the fact that in the very same ruling, it found Comsat guilty of filing false information with the agency in an effort to conceal the licensee status of EMS, and required that the matter be referred for further action to the Enforcement Bureau.<sup>112</sup> This remedial action against Comsat, a government sponsored licensee, came solely as a result of the continuing research of and public interest filings made by LRT and submitted to the Commission.

Clearly for the Commission to find Comsat/Lockheed guilty of filing false information based on LRT's pleadings and then to admonish LRT for harassing the companies as a result of the submission of the same pleadings is illogical, unsupportable, prejudicial and highly

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<sup>112</sup> The Commission notes in double numbered footnote 29 [second] that the referral to the Enforcement Bureau comes after the statute of limitation has expired. In LRT's view, this represents further evidence of the staff's anti-LRT bent of mind. LRT provided the evidence on which the Comsat rule violation is based over a year ago. However, the staff purposely avoided dealing with the matter until July 1. This action came, according to the Commission, beyond the state of limitations, thereby benefiting Comsat/Lockheed. Such a delay in this instance has obviously denied a just outcome, as it will not be possible to issue a fine or forfeiture order against Comsat/Lockheed, unless the Commission finds, as LRT urges, that the statute of limitations should be tolled as a result of the fraudulent conduct of Comsat/Lockheed.



improper. Furthermore, and much more to the point, the improper admonishment of LRT by the Commission constitutes a direct and serious infringement of the First Amendment rights of free speech and petition and the right of due process of LRT and its members.

LRT regards this as a very serious matter. LRT has been unjustly accused and improperly judged guilty of misusing Commission process, based on nothing more than the bare, unsupported accusations of Comsat/Lockheed. It must be properly noted that LRT's accusers are confessed corporate felons, former distributors of pornography and, as established in the Order and this Motion, repeated violators of Commission rules and regulations. They have admitted to filing false information with the Commission.

In comparison, for their part, LRT members have been victimized by Comsat/Lockheed executives, who, using their corporate offices, have abused government process and power, stolen property and services, engaged in coercion and intimidation and obstructed justice by concealing and filing false and fraudulent information. This is exactly the type of illegal and unethical conduct and malfeasance by corporate officers, which the White House and the Congress are presently acting to police and eliminate.<sup>113</sup>

Furthermore, in unjustly finding LRT has misused government process, the Commission has jeopardized LRT members' proper standing as litigants, and seriously prejudiced their rights to bring actions in other fora, including an appeal of the instant ruling before the U.S. Court of Appeals.

Accordingly, LRT petitions the Commission to retract ¶ 19 in its entirety. Further LRT requests that the language identifying LRT members as "confederates" be excised from the text. LRT requests that this retraction be undertaken on an expedited basis, so that the language will be removed from the Order before LRT files its Petition for Review with the US Court of Appeals.

Finally, LRT requests that appropriate language be added to the Order properly commending LRT for its continued vigilance and dedication in serving the public interest by

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<sup>113</sup> Legislation currently pending before the 107<sup>th</sup> Congress seeks real-time corporate disclosures of corporate information to protect investors; the return of funds to investors who have lost money in the markets as a result of corporate malfeasance; increased criminal penalties for corporate wrongdoing and increased powers for the Securities and Exchange Commission. See Opening Statement of Rep. Michael G. Oxley (R-OH), Chairman House Committee on Financial Services. House-Senate Conference Committee on Corporate Accountability Legislation, July 19, 2002

searching out and identifying conduct by Comsat and Lockheed and their subsidiaries, which violates federal law and the Commission's rules and policies.

## 5. Conclusion

LRT requests that the corrections, clarifications and retractions as outlined in this Motion be adopted. In undertaking this review and reassessment of the past actions of Comsat and Lockheed, it is appropriate and in fact necessary for the Commission to take into account the fact that these companies have fully admitted and have been found guilty of submitting false information in this proceeding.

Further, based on this Motion, LRT requests that ¶ 2 of the Order be amended by adding the following language:

The issues addressed by LRT in its pleadings concern the fundamental basis of the Commission's delegated authority to regulate its licensees. The Commission must be able to rely on the basic candor and veracity of its licensees and permittees. This is particularly true in the case of Comsat, which is a government sponsored corporation, founded by Congress and held to a unique public interest standard, and Lockheed, the country's largest defense contractor. We note that Comsat and Lockheed have admitted to filing false information, denying that Comsat's former Florida subsidiary was holder of a communications license. It has also been determined that Comsat/Lockheed, in filing a series of Form 312 satellite station transfer applications and amendments, failed to properly notify the Commission of a pending criminal proceeding involving its Florida subsidiary, Electromechanical Systems, Inc. ("EMS"). Comsat/Lockheed also failed to file an amendment under Section 1.65 in a timely fashion to inform the Commission of the execution by EMS of a criminal plea agreement with the Department of Justice. We have also found that Comsat/Lockheed filed a declaration under oath which falsely stated that former Comsat senior management served as officers and directors of EMS for "administrative purposes" only, which restriction would, if true, constitute a violation of Florida statutes that require directors to exercise full management control over corporations. Also, based on a review of public record evidence submitted by LRT as secured from the Office of the Secretary of State of Florida, we have determined that Comsat senior management, including its former president-CEO, general counsel and CFO, directly controlled the board of EMS and exercised voting power over EMS. We have also found it necessary to inquire further to determine whether Comsat provided a true and accurate report the U.S. Attorney for the Middle District of Florida, regarding the information it had submitted (or failed to submit) to the Commission concerning the EMS criminal proceeding, prior to our initial vote, approving the Comsat-Lockheed Merger.

Because of these matters, we find reason to question the basic qualifications of Comsat and Lockheed and have referred these matters to the Enforcement Bureau to consider whether there have been violations of the Commission's Rules, including Sections 1.17 and 1.65 and what type(s) of sanctions should be enforced against Comsat and Lockheed, including the forced liquidation of all communications assets of Comsat and Lockheed, with the proceeds to be transferred to a Digital Conversion Fund to be administered by trustees appointed by the Commission, and assist financing, through loans and/or grants, the digital upgrade of transmission facilities of small market, public and minority owned television stations and cable systems. We also find reason to determine whether the members of Comsat and Lockheed former and current senior management and agents violated their public trust, and, if so, we will adopt orders

permanently prohibiting their participation in the management of companies, which directly or indirectly control licenses issued by the Commission, and to order appropriate fines and forfeitures.

Respectfully submitted,

/s/ William L. Whitely

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July 19, 2002

**CERTIFICATE OF SERVICE**

I, William L. Whitely, hereby certify that I have this 19th day of July, 2002 directed that the foregoing MOTION FOR CORRECTIONS, CLARIFICATIONS AND RETRACTIONS be forwarded via Email, Federal Express or US Mail, postage prepaid, to the following:

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Hon. Donna A. Bucella  
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/s/ William L. Whitely

\_\_\_\_\_  
William L. Whitely

**CERTIFICATE OF SERVICE**

I, William L. Whitely, hereby certify that I have this 24th November, 2002 directed that the foregoing PETITION FOR RECONSIDERATION be transmitted and forwarded via Email, Federal Express or US Mail, postage prepaid, to the following:

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