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

In the Matter of

COMSAT Corporation 1-SAT-ISP-96

Notification of Corporate Reorganization

MEMORANDUM OPINION AND ORDER

Adopted: January 16, 1996; Released: January 16, 1996

By Chief, International Bureau

1. Pursuant to the Commission's 1982 First Structure Order,[1] Comsat Corporation is required to notify the Commission of plans for corporate reorganization. This is so the Commission can assure compliance with longstanding Commission policy requiring separation of Comsat's INTELSAT/Inmarsat activities and its competitive businesses. On October 5, 1995 Comsat notified the Commission of a corporate reorganization. On October 10, 1995 the notification was placed on public notice.[2] Comments were filed by AT&T, Maritime Telecommunications Network, Inc. (MTN), and PanAmSat Corporation. Comsat filed a reply comment. We find Comsat's reorganization plan is consistent with the Commission's policies in the *First Structure Order*.

COMSAT's NOTIFICATION

2. Comsat undertakes its INTELSAT and Inmarsat Signatory functions in two separate units: Comsat World System (CWS) (Intelsat functions) and Comsat Mobile Communications (CMC) (Inmarsat functions). CWS has been part of Comsat International Communications (CIC); CMC has been separate from CIC. Comsat has notified the Commission of a reorganization in which CMC also will be integrated into CIC.[3] Comsat states that under the new CIC organization, CWS and CMC will return to being housed within the same division, but continue as separate units to conduct Comsat's INTELSAT and Inmarsat businesses. Each line of business will have its own Vice President and General Manager reporting to CIC's President. CIC will also continue to hold Comsat International ventures (IV), a nonjurisdictional business.

3. According to the Notification, the support services utilized by CMC and CWS will be combined into CIC; including Finance, Legal, and Human Resources. CIC will offer these services to the CWS and CMC lines of business on an as-needed basis and will charge each unit for these services in accordance with FCC requirements. Each business unit will continue to maintain separate accounts, identifiable costs will be charged directly to each unit, and CIC residual costs will be apportioned on the basis of gross operating expenses as previously approved by the Commission.[4]

4. U.S. Signatory activities involving INTELSAT and Inmarsat will be consolidated into a single office for both CMC and CWS, which will be headed by the Vice President, International Affairs. This office will be housed in the CWS business unit and will provide services to CMC on an as needed basis. Costs of service by CWS to CMC will be charged directly to CMC. Comsat states this separate accounting methodology ensures that CWS and CMC ratepayers do not bear any CIC non-jurisdictional costs.[5]

DISCUSSION

5. In the First Structure Order, the Commission delegated authority to the Bureau to review Comsat structure proposals for compliance with Commission policy as articulated in the *Comsat Study* and the *First Structure Order*.[6] The Commission's proceedings on the corporate structure of Comsat have focused on Comsat's pursuit of diversified business opportunities in a manner consistent with Comsat's mission as the U.S. Signatory to INTELAT and Inmarsat. The Commission has found that Comsat's involvement in diversified businesses provides opportunities for anti-competitive behavior which require regulatory safeguards. These safeguards involve both structural separation of Comsat's monopoly INTELSAT/Inmarsat activities from its competitive activities and the imposition of certain conduct requirements.[7] We find that Comsat's reorganization is consistent with established Commission policy. We treat the comments of each party below.

6. AT&T does not oppose Comsat's consolidation plan but raises several issues. First, AT&T notes the Commission's 1994 *Earth Station Order* requires that Comsat offer INTELSAT earth station services through a separate subsidiary.[8] AT&T questions how this requirement will be fully satisfied under Comsat's plan to consolidate its Inmarsat and INTELSAT activities under one division. Second,

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[1] For a history of Comsat structure *see* Communications Satellite Corporation *(Comsat Study)*, 77 F.C.C. 2d 564 (1980); Communications Satellite Corporation *(Comsat Structure Rulemaking)*, 81 F.C.C. 2d 287 (1980); Changes in the Corporate Structure and Operations of the Communications Satellite Corporation *(First Structure Order)*, 90 F.C.C. 2d 1159 (1982); Second Memorandum Opinion and Order, *(Second Structure Order)*, 97 F.C.C. 2d 145 (1984), *on recon. (Reconsideration Order)*, 99 F.C.C. 2d 1040 (1984), Petition to Reopen filed by PanAmSat pending.

[2] *See* Comsat Corporation's Notification of Corporate Reorganization, Report No. SPB-26 (October 10, 1995).

[3] Comsat notes that historically, the predecessors of CMC and CWS operated as separate lines of business within a single Comsat division. Notification at 2.

[4] Notification at 3 citing Changes in the Corporate Structure and Operations of the Communications Satellite Corporation, 99 F.C.C. 2d 1040, 1060-61 (1984).

[5] Notification at 3.

[6] *First Structure Order* at 1198-1199.

[7] *Id.*

[8] AT&T Comment at 2, citing In the Matter of Modification of Policy on Ownership and Operation of U.S. Earth Stations that Operate with the Intelsat Global Communications Satellite System, FCC 84-605, CC Docket No. 82-540, Report and Order adopted December 4, 1984; Released December 18, 1984, p. 287.

AT&T notes that Comsat has proposed to consolidate its signatory functions within CIC at a time when INTELSAT and Inmarsat are holding internal discussions regarding privatization.[9] AT&T expresses concern that conflicts of interest may arise as a result of this consolidation. As an illustration, AT&T recounts one case in which CWS introduced wideband mobile service while CMC opposed carriers providing the exact same service. Finally, AT&T is concerned that "Comsat's proposed notice to integrate CMC into CIC may unfairly serve to strengthen Comsat's *de facto* monopoly in several areas of satellite services and equipment."[10]

7. Comsat replies the proposed reorganization will not conflict with the Commission's 1984 *Earth Station Order*.[11] Comsat states the *Earth Station Order* precludes Comsat's jurisdictional INTELSAT unit from owning and operating earth stations which connect with the Intelsat system. Comsat asserts CWS will not offer Intelsat earth station services pursuant to the reorganization.[12] Comsat adds that issues relating to privatization of INTELSAT and Inmarsat clearly overlap and the same staff should be able to handle these issues subject to appropriate cost allocation procedures.[13] Regarding AT&T's suggestion that a conflict arose between CMC and CWS over the provision of wideband mobile service via INTELSAT, Comsat states that CMC has never opposed the grant of experimental authority for wideband mobile services to any carrier. Comsat further states AT&T has not shown how a return to the organization which Comsat had in place four years ago will strengthen any aspect of an alleged *de facto* monopoly.[14]

8. We find nothing in AT&T's comments that prevents us from authorizing Comsat's proposed reorganization. Under the proposed structure, CWS will not own or operate earth stations connected with INTELSAT. As to conflicts of interest, internal conflicts are a normal part of any large business enterprise. In any event, we have authority to review any instance in which violations of Comsat's statutory responsibilities and Commission policy may be alleged. Finally, we agree with Comsat that the proposed structure does not expand Comsat's monopoly role as the U.S. Signatory to INTELSAT or Inmarsat. Comsat's status as the U.S. designated operating entity to INTELSAT and Inmarsat derives from federal statute.[15] There is no statutory requirement or Commission policy that requires these roles to be undertaken through separate organizational units. To the extent that Comsat's reorganization consolidates some work on the privatization of INTELSAT and Inmarsat, Comsat must apply appropriate cost allocation methods to ensure that all costs are allocated to the appropriate jurisdictional rate base.[16]

9. MTN provides C-band maritime satellite services, partially via Intelsat satellites. CMC provides some experimental C-band maritime services over non-Inmarsat satellites. MTN notes that the Comsat reorganization would merge the organization's traditional maritime resources (L-band/Inmarsat) with newly employed maritime resources (C-band and/INTELSAT). MTN believes the Commission should take no action in ruling on the Comsat reorganization without first resolving issues it has raised in other proceedings.

10. In separate proceedings, MTN has argued that Comsat's provision of maritime C-band service violates the Maritime Satellite Act and the Commission's structural separation requirements.[17] In this proceeding, MTN argues to the extent the proposed reorganization increases the use of CMC resources in support of objectives antithetical to the interests of Inmarsat, the rationale for MTN's objection to CMC's C-band service is strengthened. MTN adds that any Comsat reorganization seeking to combine the staff and management of INTELSAT and Inmarsat, for the purpose of selling both narrowband (L-band) and wideband (C-band) maritime mobile services, would only strengthen MTN's assertion of a violation of structural separation. MTN also argues the reorganization is anti-competitive and therefore against the public interest because CWS could use CMC's customer lists of Inmarsat maritime users in order to market INTELSAT's C-band service.

11. Comsat replies that the issues MTN raises are already pending before the Commission and can be decided independent of the reorganization.[18] Comsat states the only effect of the reorganization will be that CWS will no longer actively market INTELSAT capacity for wideband mobile services but will leave that task to CMC. However, CWS will continue to make such capacity available to anyone who wants it on a non-discriminatory basis.[19] Comsat adds that all consolidated sales and marketing activities will continue to be subject to detailed cost accounting procedures approved by the Commission.

12. We see no need to withhold action on Comsat's proposed reorganization pending consideration in separate proceedings of MTN's contention that CMC should not provide C-band maritime services over non-Inmarsat facilities on an unseparated basis. That issue does not turn on whether or not CMC operates as a business unit of CIC. Further, although Comsat states CWS will continue to provide C-band services, we note that as a common carrier CWS must offer the C-band services on a non-discriminatory basis subject to the enforcement and complaint mechanisms of section 208 of the Communications Act of 1934. *See* 47 U.S.C. § 208.

13. Regarding CWS access to CMC customer lists, the Commission's existing policies continue to apply.[20] Those policies require appropriate cost allocation methods to ensure against crossx subsidization between INTELSAT and Inmarsat operators.[21] Thus, Comsat resources expended on compilation of CMC marketing lists should be allocated to

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[9] AT&T Comments at 2.
[10] *Id.*
[11] Comsat Reply at 7 citing Modification of Policy on Ownership and Operation of U.S. Earth Stations that Operate with the INTELSAT System, FCC 84-605, CC Docket No. 82-540, released Dec. 18, 1984.
[12] *Id.* at 7.
[13] Id.
[14] *Id.* at 8.
[15] *See* 47 U.S.C. § 701 and 752.
[16] *See* Implementation of Requirements of the International Maritime Satellite Act , 91 F.C.C. 2d 245, 259 (1982).
[17] *See* Petition for Declaratory Ruling, Docket No. ISP-94-007 filed August 11, 1994; and Petition for Emergency Relief to Enforce the Inmarsat Act and the Comsat Structural Separation Requirements, Docket No. ISP-94-007, filed August 15, 1994.
[18] Comsat Reply at 4.
[19] *Id.* at 5.
[20] *See* note 16 *supra*.
[21] *Id.*

the CMC jurisdictional rate base. Any distribution of the list must be compensated to the CMC jurisdictional rate base. Further, in the Comsat Study the Commission found that Comsat's INTELSAT/Inmarsat role provides it with opportunities to gain advantages over U.S. competitors in the markets in which it seeks to participate.[22] Thus in the *First Structure Order* the Commission ordered Comsat to establish control mechanisms sufficient to ensure that entities within the parent organization do not disclose to any of its competitive subsidiaries technical data or information generated by INTELSAT or Inmarsat funded work unless it makes such information available to non-affiliated entities under the same terms and conditions.[23] Should the Commission determine that C-band maritime services over non-Inmarsat facilities must be provided on a separated basis, this policy would govern the sharing of customer lists or any information by CMC or CWS with each other or with any of Comsat's competitive subsidiaries or affiliates.

14. PanAmSat does not oppose the reorganization, subject to one clarification. PanAmSat notes that in 1993, the Commission granted CMC a partial waiver of the structural separation requirements so that it could provide what Comsat characterized as "value-added" maritime services on an unseparated basis.[24] PanAmSat seeks clarification that no similar waiver has been granted to CWS for "value-added" services that could be sold in conjunction with its fixed satellite services. PanAmSat adds that the issues raised by Comsat's structure should be addressed in a single comprehensive proceeding considering Comsat's entire enterprise.[25]

15. Comsat replies that the Commission's order granting Comsat a partial waiver of the structural separation requirements is expressly limited to CMC's provision of certain value-added maritime services and the instant reorganization does not in any manner extend that waiver to CWS. PanAmSat's request for a comprehensive proceeding is already before the Commission and need not be addressed here.[26] Comsat adds that the reorganization does not signal the need for a comprehensive review of Comsat's structure, but rather entails a return to essentially the same structure which the Commission has previously determined to be consistent with Comsat's structural separation requirements.[27]

16. Our approval of Comsat's proposed reorganization does not extend the partial waiver granted to CMC to provide a discrete class of maritime services on an unseparated basis.[28] Regarding PanAmSat's request for a comprehensive review of the Comsat enterprise, we note the request is pending before the Commission and will be considered separately. The limited reorganization proposed by Comsat does not warrant comprehensive review proposed by PanAmSat.

CONCLUSION

17. We find Comsat's request to reorganize as described in the Notification is consistent with the public interest and Commission policy in its *First Structure Order*. Comsat's reorganization, as described in its Notification, complies with Commission policy ensuring the integrity of the jurisdictional rates bases. In many respects the reorganization returns Comsat to a structure approved by the *First Structure Order*. We conclude that Comsat has demonstrated that the reorganization serves the public interest and it may proceed to reorganize as described in the Notification.

FEDERAL COMMUNICATIONS COMMISSION

Scott Blake Harris
Chief, International Bureau

[22] *Comsat Study* at 648.
[23] *First Structure Order* at 1187.
[24] *See* Communications Satellite Corporation, 8 F.C.C. Rcd. 1531, 1532 (1993).
[25] *See* In re Changes in the Corporate Structure and Operations of the Communications Satellite Corporation, CC Docket No. 80-634, Petition to Reopen filed by PanAmSat pending.
[26] Comsat Reply at 2.
[27] *Id.* at 3.
[28] *See* note 24 *supra*.