

**C L I F F O R D
C H A N C E
R O G E R S & W E L L S**

**CLIFFORD CHANCE
ROGERS & WELLS LLP**
THE WILLIAM P. ROGERS BUILDING
2001 K STREET NW
WASHINGTON DC 20006 1001
TEL +1 202 912 5000
FAX +1 202 912 6000
www.cliffordchance.com

May 4, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Telenor Satellite Inc. / COMSAT Corporation Assignment Applications

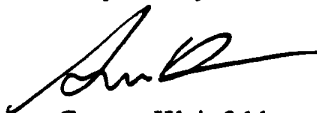
Dear Ms. Salas:

Transmitted herewith, on behalf of Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc. ("Telenor") and COMSAT Corporation and COMSAT General Corporation ("COMSAT"), are two copies of their applications for consent to the assignment of various FCC licenses held by COMSAT Corporation and COMSAT General Corporation in connection with the pending acquisition of the assets of the COMSAT business unit known as COMSAT Mobile Communications.

The original and appropriate number of copies of each application, with accompanying filing fees (where required), are being filed concurrently in accordance with applicable Commission rules. The parties hereby certify that each application submitted herewith is an accurate copy of the original filing made through the Mellon Bank.

Questions concerning COMSAT should be directed to Rosemary Harold of Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006, telephone (202) 719-7000. Questions concerning Telenor should be directed to George Kleinfeld of Clifford Chance Rogers & Wells, 2001 K Street, N.W., Washington, D.C. 20006, telephone (202) 912-5000.

Respectfully submitted,



George Kleinfeld
Counsel for Telenor

2001 MAY - 7 A 10: 14

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

In the Matter of)
)
Lockheed Martin Global)
Telecommunications, COMSAT)
Corporation, and COMSAT)
General Corporation, Assignor)
)
and) File No.
)
Telenor Satellite Mobile Services, Inc.,)
and Telenor Satellite, Inc., Assignee)
)
Applications for Assignment of)
Section 214 Authorizations and)
Earth Station Licenses)

**APPLICATION FOR APPROVAL OF ASSIGNMENTS
AND PETITION FOR DECLARATORY RULING**

Britt Carina Ivarson Horncastle
Sole Director
Telenor Satellite Mobile Services, Inc.
and Telenor Satellite, Inc.
9 East Lookerman Street
Dover, Delaware 19901

John V. Sponyoe
President and Chief Executive Officer
Lockheed Martin Global
Telecommunications and
COMSAT Corporation
6560 Rock Spring Drive
Bethesda, Maryland 20817

George Kleinfeld
Scott B. Murray
Damon A. Terrill
CLIFFORD CHANCE ROGERS & WELLS
2001 K Street, N.W.
Washington, D.C. 20006

Lawrence W. Secrest, III
Rosemary C. Harold
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006

*Counsel for Telenor Satellite Mobile Services, Inc.
and Telenor Satellite, Inc.*

*Counsel for Lockheed Martin Global
Telecommunications and COMSAT
Corporation*

Ms. Magalie Roman Salas
May 4, 2001

cc: Hon. Michael K. Powell
Hon. Susan Ness
Hon. Harold W. Furchtgott-Roth
Hon. Gloria Tristani
Peter Tenhula
Katherine King
Adam Krinksky
Mark Schneider
Bryan Tramont
Donald Abelson
Chris Murphy
James Ball
Thomas Tycz
Cassandra Thomas
Karl Kensinger
Jennifer Gilsenan
Jane Mago

Table of Contents

- I. DESCRIPTION OF THE APPLICANTS7
 - A. COMSAT Mobile Communications7
 - B. TSMS and Associated Entities.....7
 - 1. Background and Lines of Business.....8
 - 2. Corporate Ownership and Governance10
 - a) Governance Structure.....11
- II. DESCRIPTION OF THE PROPOSED TRANSACTION.....15
- III. FCC AUTHORIZATIONS TO BE TRANSFERRED PURSUANT TO THIS APPLICATION16
 - A. Current Licenses and Authorizations.....16
 - B. Request for Approval of Additional Authorizations.....17
 - C. Blanket Exemption to Cut-Off Rules.....17
- IV. QUALIFICATIONS AND ELIGIBILITY OF THE TRANSFEREE.....18
 - A. Financial and Technical Qualifications.....19
 - B. Telenor Satellite Is Legally Qualified to Hold the CMC Licenses19
- V. THE PROPOSED ACQUISITION WILL CLEARLY SERVE THE PUBLIC INTEREST AND PROMOTE COMPETITION IN THE U.S. TELECOMMUNICATIONS MARKETPLACE22
 - A. Because Norway Is a WTO Member Country, Telenor Satellite’s Application Is Presumed to Serve the Public Interest.....24
 - B. The Proposed Transaction Will Deliver Significant Benefits to U.S. Consumers.....24
 - 1. The New Entity Will Be Able to Achieve Significant Efficiencies and Cost Savings Due to Its Global Network and Infrastructure.....25
 - a) Global Coverage26

- b) Call Routing Efficiencies26
 - c) Volume Discounts.....27
 - 2. The Economies of Scale from the Acquisition Would Significantly Benefit Customers of the Combined Entity27
 - 3. The New Entity Will Have Greater Ability to Provide U.S. Customers with New Services, Features and Applications.....28
 - 4. The Proposed Transaction Will Enable the Combined Entity to Keep Pace in a Highly Competitive Marketplace with Numerous Alternative Mobile Service Providers30
 - 5. The Proposed Acquisition Will Promote the Continued Presence and Development in the United States of CMC’s Two Earth Station Facilities33
- C. The Proposed Transaction Poses No Risk of Harm to Competition in Any Relevant Market34
 - 1. The Relevant Geographic and U.S. Service Markets Are Limited.....34
 - 2. Because the Applicants Do Not Compete In the Relevant Market, the Proposed Transaction Cannot Harm the Already Highly Competitive International Mobile Services Marketplace36
- D. Any Executive Branch Concerns Regarding National Security or Law Enforcement Will Be Fully Addressed Through Cooperation with the Relevant Federal Agencies and the Adoption of Appropriate Safeguards.....38

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

In the Matter of)
))
))
Lockheed Martin Global)
Telecommunications, COMSAT)
Corporation, and COMSAT)
General Corporation, Assignor)
))
))
and)
))
))
Telenor Satellite Mobile Services, Inc.,)
and Telenor Satellite, Inc., Assignee)
))
))
Applications for Assignment of)
Section 214 Authorizations and)
Earth Station Licenses)

File No.

**APPLICATION FOR APPROVAL OF ASSIGNMENTS
AND PETITION FOR DECLARATORY RULING**

Lockheed Martin Global Telecommunications (“LMGT”), COMSAT Corporation, and COMSAT General Corporation (collectively “COMSAT”), together with Telenor Satellite Mobile Services, Inc. (“TSMS”), Telenor Satellite, Inc. (“Telenor Satellite”), and their Norwegian indirect sole owner and guarantor, Telenor Broadband Services AS (individually or collectively “Telenor”), submit this Application under Sections 214, 310(b)(4) and 310(d) of the

Communications Act of 1934¹ to request approval of COMSAT's assignment of certain Title II common carrier authorizations and Title III radio licenses to Telenor Satellite. The Applicants seek approval of these assignments in connection with TSMS's proposed acquisition of the assets of a COMSAT business unit known as COMSAT Mobile Communications ("CMC").² The Applicants also request a declaratory ruling that the acquisition of these authorizations and licenses by Telenor Satellite, and the proposed operation by TSMS of the CMC business, is consistent with Section 310 and will serve the public interest.

INTRODUCTION and SUMMARY

The proposed acquisition of the CMC line of business by Telenor's U.S. subsidiaries will serve the public interest by enhancing competition and consumer choice in the marketplace for U.S. international mobile satellite services ("MSS"). In particular, the combination will fill existing gaps in both companies' geographic reach, giving U.S. customers a new choice for seamless worldwide coverage from a single provider. Moreover, Telenor plans to offer MSS features and services not currently available from CMC, thereby expanding product choice.

Conversely, the proposed transaction poses no risk of harm to the already competitive marketplace for U.S. international mobile communications services. Because Telenor currently does not originate or provide international MSS from the United States—and therefore does not provide U.S. international services as defined by the Commission—approving the combination of CMC and Telenor will not lessen competition for such services. Rather, the proposed acquisition will enhance the range and quality of MSS available to U.S. customers, while also

¹ 47 U.S.C. §§ 214, 310.

² As noted in Attachment 1 and an assignment form accompanying this filing, one of the licenses that COMSAT proposes to assign to Telenor Satellite is held by COMSAT General Corporation, a subsidiary of COMSAT Corporation.

satisfying the United States' market-opening commitments under the World Trade Organization's Agreement on Basic Telecommunications Services (the "WTO Basic Telecom Agreement").

Telenor ASA, the U.S. subsidiaries' ultimate parent company, offers a variety of telecommunications services in its home country and abroad. Telenor ASA was incorporated seven years ago as the result of Norway's restructuring of its public telecommunications carrier. The company issued an initial public offering last year, which resulted in the sale of approximately twenty-one percent of its stock to private investors. Telenor ASA's shares are traded on the NASDAQ and Oslo stock exchanges, thereby subjecting the corporation to U.S. and Norwegian securities laws.

As business enterprises, both Telenor and COMSAT are among the 28 land earth station ("LES") operators that provide mobile-originated services via the Inmarsat system. Now a privately incorporated company known as Inmarsat Ventures, Ltd.,³ Inmarsat was founded in 1979 as an intergovernmental organization ("IGO") to provide satellite-based maritime communications. It has since come to support aeronautical and land mobile services, as well. The current array of facilities-based LES operators provide Inmarsat services on both a wholesale and retail basis. As a consequence, they compete for Inmarsat-based traffic in different regions against one another—and through approximately 500 certified Inmarsat service providers worldwide—in offering services directly to end users or through their numerous distributors and agents in various locations. CMC provides international mobile services primarily through its

³ LMGT currently owns approximately 14% of Inmarsat Ventures Ltd. The transaction proposed here does not affect that interest. Telenor Broadband Services AS, in an unrelated transaction last year, acquired from LMGT additional shares in Inmarsat Ventures Ltd. and now holds 15%—the maximum level of ownership permitted under the Inmarsat Ventures Ltd. (Continued...)

land earth station facilities in Connecticut and California; Telenor's LES, known as EIK, is located in Norway.

The proposed acquisition will ensure that the combined entity can compete effectively for U.S. international MSS business. There is a wide range of LES operators and certified Inmarsat service providers competing for U.S. international traffic. In terms of U.S.-based Inmarsat traffic, CMC has already been surpassed by a Canadian competitor, Stratos, which recently acquired the mobile satellite unit of British Telecom. The proposed transaction will not alter CMC's position, because Telenor has no U.S. international MSS business. Two other major LES operators, the Netherlands' KPN and Australia's Telstra, recently merged their Inmarsat service platforms under the name "Xantic" (formerly known as "Station 12"). Both of these newly combined entities offer service to all four of the ocean regions in the Inmarsat system via their own or their affiliates' facilities, in contrast to CMC and Telenor Broadband, which currently must contract with other facility owners to provide global coverage.

In addition to its many rivals within the Inmarsat system, CMC also faces facilities-based competition in the U.S. market from satellite systems that offer mobile communications services internationally. These alternative global and regional satellite systems include Motient, Globalstar, ACeS, and TMI, to name a few. The emergence of a terrestrial-based global mobile roaming market, as described in the recent *Deutsche Telekom-VoiceStream Order*, also presents an ever-growing challenge to win over U.S. consumers to MSS services.

To meet the demands of this vigorously competitive marketplace, Telenor has concluded that acquiring and thereby combining the CMC enterprise into one global services platform will

(...Continued)
Articles of Association.

most effectively attract and serve customers. The anticipated benefits include operational efficiencies and synergies that ultimately will flow to U.S. customers and end-users in the form of improved and more varied services at competitive prices. Among other economies of scale, creation of a unified network with seamless access to all four Inmarsat ocean regions will eliminate the current need for—and cost of—outsourcing communications traffic in the Indian Ocean Region (as CMC now does) or the Pacific Ocean Region (as Telenor Broadband now does).

The proposed new entity also will be better positioned to deliver a greater range and quality of mobile satellite services to U.S. customers and end-users. Outside the United States, Telenor has a proven track record as a pioneering innovator; for example, its Norwegian predecessor was among the first to offer mobile VSAT applications for the maritime and offshore oil and gas industries. Approval of the proposed assignment will mean that the benefits of such innovations would also become available to U.S. customers on a global basis.

In addition to its promise of significant consumer benefits without the risk of competitive harm, the proposed transaction structure presents no legal impediments to the Commission's grant of this Application. The recently released *Deutsche Telekom-VoiceStream Order* makes clear that the U.S. subsidiaries of the Norwegian-incorporated Telenor ASA are fully qualified to hold the Title III licenses and Title II authorizations at issue here. The corporate relationship between the Delaware-incorporated Telenor Satellite and its parent companies places the proposed transaction squarely within Section 310(b)(4) of the Communications Act, which (as explained in the *Deutsche Telekom-VoiceStream Order*) gives the Commission discretion to approve indirect foreign ownership of U.S. licensees. Moreover, because Norway is a WTO-

member country, Telenor's subsidiaries enjoy the benefit of a presumption that their entry into the U.S. marketplace will be pro-competitive.

That presumption, in turn, is entirely supported by the facts. Telenor ASA (the proposed licensee's ultimate parent company) is a publicly-traded company that operates like other commercial enterprises. It is fully subject to Norwegian and U.S. securities laws designed to protect its private shareholders; the company has no national government officials on its board or in its employee ranks; and it receives no preferential access to capital or favorable regulatory treatment by virtue of its partial government ownership. In addition, because Norway adheres in full to the European Union's telecommunications regulatory principles (through the framework of the European Economic Area Agreement) and has opened its own domestic telecommunications markets to foreign entities, Telenor ASA and its subsidiaries are subject to the economic discipline of a competitive marketplace in their home country. Finally, in connection with this Application, Telenor has initiated negotiations with relevant U.S. executive branch agencies and will abide by the terms of an anticipated agreement with those agencies with respect to national security and law enforcement issues.

In view of these facts, the Commission should have no hesitation in granting the proposed assignment of CMC's licenses and authorizations to Telenor Satellite and in issuing a declaratory ruling that the proposed transaction will serve the public interest. In the sections that follow, this Application provides descriptions of (I) the Applicants, (II) the proposed transaction, (III) the licenses and authorizations, (IV) the proposed Assignee's qualifications, and (V) the public interest benefits associated with TSMS's proposed acquisition of the CMC business. Also attached are FCC forms and supporting applications in satisfaction of the Commission's rules

governing the proposed assignments, including an application under Section 214 and accompanying regulations.

I. DESCRIPTION OF THE APPLICANTS

A. COMSAT Mobile Communications

CMC is a business unit of COMSAT Corporation, a wholly owned subsidiary of LMGT, which in turn is a wholly owned subsidiary of Lockheed Martin Corporation, a publicly-traded company. CMC's primary business is the provision of mobile satellite service to maritime, aeronautical, and land mobile customers, utilizing space segment capacity on the Inmarsat satellite system. CMC currently provides service to customers using a combination of its own land earth station facilities located at Southbury, Connecticut, and Santa Paula, California, and foreign-owned land earth stations located at Kuantan, Malaysia, and for certain customer services, Perth, Australia and Fucino, Italy. Additionally, CMC provides C-band services to cruise ship customers using space segment capacity on the INTELSAT satellite system.

The operating assets of CMC will transfer to TSMS or one of its U.S. subsidiaries upon closing of the proposed acquisition. In addition, substantially all of the personnel currently assigned by LMGT to CMC will be retained by TSMS or an affiliated U.S. operating company upon closing.

B. TSMS and Associated Entities

Telenor Broadband Services AS of Norway ("Telenor Broadband") established TSMS as a U.S. holding company earlier this year to serve as the proposed buyer of the CMC business from COMSAT. TSMS is 100% indirectly owned by Telenor Broadband, which is in turn 100% indirectly owned by Telenor ASA. Telenor ASA is a publicly-traded company incorporated in Norway and based in Oslo. Through its wholly owned subsidiaries, Telenor ASA provides fixed network services to nearly 2.5 million subscribers and mobile services to more than 2 million

subscribers in Norway. In addition to fixed and cellular services in Norway, Telenor ASA's subsidiaries also provide mobile communications, broadcasting and satellite services, and internet and associated services in European and other markets worldwide. Gross sales revenue for Telenor ASA's consolidated operations amounted to nearly \$4 billion in 2000.

1. Background and Lines of Business

In 1994, Norway converted its public telecommunications carrier into a company limited by shares ("Ltd.") owned 100% by the Kingdom of Norway, and named the new company Telenor AS. Also during this period, the government began to open Norway's telecommunications markets more widely to competition, with a full liberalization of all market segments to new entrants completed by January 1, 1998. An initial public offering on the Oslo and NASDAQ exchanges in December 2000 resulted in the sale to the general public of approximately 21% of the shares in the renamed Telenor ASA (including approximately 14% to non-Norwegians), leaving 79% ownership with the Kingdom of Norway. The Norwegian parliament has authorized the offering of additional Telenor ASA shares to the general public, within a currently permitted ceiling of 49% public ownership.

Telenor ASA currently has four core areas of business: (1) mobile communications, both in Norway and as a minority shareholder in mobile telephony operations in a total of 15 markets, primarily in Europe and a few in Asia; (2) fixed network telecommunications service in Norway, including the highest rate of ISDN penetration in the world; (3) internet services, including not only ISP service in Norway but also European-wide provision of internet and other IP-based communications services under the "Nextra" brand; and (4) broadband services, including the leading satellite broadcasting and subscription television operation in Scandinavia (which Telenor Broadband provides over its own Thor satellites, INTELSAT, and terrestrial facilities),

and other satellite-based services provided over the Thor satellites or the INTELSAT, Eutelsat, and Inmarsat systems.

Through its Norwegian land earth station, EIK, and its 15% shareholding in Inmarsat Ventures Ltd., Telenor Broadband has made a strong and enduring commitment to the commercial success of the Inmarsat system. Inmarsat began in 1979 as the International Maritime Satellite Organization with the objective of providing satellite communications and global maritime distress and safety services (GMDSS) to the maritime industry. It was privatized in 1999.⁴ The active participation and investment of the former Telenor Satellite Services AS (now Telenor Broadband) in Inmarsat services reflects the relatively high level of demand in Norway for communications to serve its substantial commercial maritime fleet and offshore oil & gas industry, both domestically and worldwide. Telenor is one of the 28 land earth station operators ("LESOs") that currently provide Inmarsat services, through 36 different land earth stations located around the globe. In different geographic regions that they serve, the LESOs compete with one another and approximately 500 certified Inmarsat service providers (not including distributors and agents). Of all these Inmarsat service providers, Telenor has earned one of the best reputations for service quality, technical sophistication, reliability, and customer service.

Telenor Broadband's gross revenues from mobile satellite service in 2000 approached \$100 million, derived not only from customers in Europe, but also from Asia, Africa, and the Americas. Telenor Broadband offers the full range of Inmarsat services, including maritime, aeronautical, and land mobile voice and data communications. Through the EIK earth station,

⁴ See FCC Public Notice, *International Bureau Information: Report to Congress Regarding the ORBIT Act* (rel. March 31, 2000).

Telenor Broadband can directly access Inmarsat satellites that serve the Indian Ocean, Atlantic Ocean East, and Atlantic Ocean West regions, leaving only the Pacific Ocean Region outside its zones of coverage.

Telenor Broadband's mobile satellite business has no customers for U.S.-originated international service nor does any other Telenor ASA business currently have appreciable U.S.-originated revenues. Telenor ASA currently does not own or lease any telecommunications common carrier facilities in the United States, although one of its wholly-owned subsidiaries, Telenor Global Services AS, does hold a Section 214 authorization for global facilities-based and resale service.⁵

2. Corporate Ownership and Governance

As a publicly traded company, Telenor ASA operates strictly on a for-profit basis. Telenor ASA's competitive discipline, commercial orientation, and full exposure to market forces are ensured through the mechanisms and safeguards described below.⁶

The Kingdom's shares in Telenor ASA are held by the Ministry of Trade and Industry, a separate agency from Norway's telecommunications regulator, the Post and Telecommunications Authority ("PT"). The PT functions as an independent administrative unit of the Ministry of Transport and Communications, and legally has complete autonomy from political intervention.⁷ The Norwegian parliament assigned all shareholder rights to the Ministry of Trade and Industry

⁵ See FCC File Number ITC-214-19980303-00160 (1998).

⁶ The information provided herein regarding the corporate governance of Telenor ASA is current as of the filing date of this Application.

⁷ Decisions of the PT are subject to two levels of formal legal appeal by affected parties, first to an appeals board and second to Norway's independent judiciary.

in order to reinforce the legal and structural separation of Norway's ownership interest from the government's regulatory oversight of Telenor ASA and its competitors.

a) Governance Structure

Three consecutive layers of private sector control separate the Ministry of Trade and Industry exercising the Kingdom's shareholder rights from the daily management, business activity, and strategic direction of Telenor ASA. At the highest level of control sits the 15-member Corporate Assembly, elected by the Shareholder's Meeting. Ten of the Assembly members are shareholder-elected and five are employee-elected (by the approximately 20,000 employees of Telenor ASA). None of these 15 individuals holds a position in the national government. By law, members of the Corporate Assembly must represent the interests of all shareholders, including private shareholders, fairly and without favoritism or conflicts of interest.⁸ The Corporate Assembly elects the Board of Directors, selected through a Nomination Committee, and has final approval power over major investments and substantial changes in the company's operations, in accordance with the Norwegian Public Companies Act.

Telenor ASA's Board of Directors has nine members, none of whom hold positions in the Norwegian government or national civil service. The Board selects and supervises the company's senior managing officers. The senior officers, including the President and Chief Executive Officer, have responsibility for the daily management of the company. None of the officers or other executives of Telenor ASA are government officials or civil servants. Board members and officers of Telenor ASA have the same legal obligation as members of the

⁸ See Articles 6-27, 6-28 and 6-38(2) of the Norwegian Public Limited Companies Act.

Corporate Assembly to serve the interests of all shareholders without favoring the interests of one class or type of shareholder over another.⁹

In sum, Telenor ASA's Corporate Assembly, as a fiduciary for all of the shareholders, has appointed a Board comprised exclusively of private citizens, which in turn supervises a management team comprised exclusively of private citizens. This three-tiered decision-making structure insulates Telenor ASA's officers from potential government influence and precludes the Ministry of Trade and Industry (representing the shareholder rights of the Kingdom) from participating in company management or operations.

For-profit orientation and obligation of management—Telenor ASA's directors and officers manage the company as a business with the objective of earning profits that equal or exceed the performance of peer companies in the industry for the benefit of all shareholders.¹⁰ This expectation is reinforced by the Telenor ASA management's fiduciary obligation to protect the interests of all shareholders under Norwegian law. In addition, as a NASDAQ-listed company, Telenor ASA is subject to U.S. securities laws, including the disclosure rules of the Securities and Exchange Commission, as well as Norwegian securities laws and regulations governing the Oslo stock exchange.¹¹

⁹ *Id.* Norwegian corporate law entitles minority shareholders to assert and defend their rights in court—including the power to obtain reversal of any board action that unreasonably favors the interests of other shareholders or third parties over the interests of the adversely affected shareholders or the company as a whole.

¹⁰ Evaluation of company results and senior management performance is strictly on the basis of return on capital, long-term profitable business development, and the creation of value for all shareholders. In particular, the Corporate Assembly and the Board expect senior management to generate capital returns consistent with the world's other leading telecommunications carriers.

¹¹ The following relevant disclosure statements appeared in the November 2000 Prospectus for Telenor's initial public offering:

(Continued...)

Absence of subsidies or other government benefits—Telenor ASA receives no grants, loans, loan guarantees, or other subsidies from the government.¹² Telenor ASA currently has a rating from Moody's for its long-term debt of A2, which is consistent with the ratings of peer telecommunications carriers and which reflects the absence of any government guarantees or other backing of Telenor ASA's debt.

Competitive access to domestic telecommunications marketplace—Norway provides unrestricted access to its telecommunications markets as a party in good standing to the WTO Basic Telecom Agreement, including the Agreement's Reference Paper on Regulatory Principles. Norway fully liberalized all segments of its telecommunications markets effective January 1, 1998, making it one of the first European countries to conform with the European Union's Open Network Provision (ONP) directives.¹³

(...Continued)

The Norwegian government has noted that as one of several shareholders in Telenor, the Kingdom of Norway will foremost concentrate on issues relating to return on capital, capital structure and dividend policy, emphasizing long-term profitable business development and the creation of value for all shareholders. The Norwegian government plans to ensure that the Kingdom of Norway's ownership position will be exercised professionally and in accordance with usual businesslike practices. Telenor will be expected to generate capital returns consistent with those of other European companies in the same industry and with equivalent positioning to that of Telenor. The capital structure and the dividend policy should be conducive to the creation of shareholder value.

¹² Rather, the government imposes universal service obligations on Telenor as the country's dominant fixed-line carrier that require Telenor to provide nationwide access at affordable prices for basic telecommunications service. In general, Telenor receives no compensation from the government for complying with its universal service obligations, including the cost of providing fixed-line access to remote regions of Norway. The only compensation paid by the government is to offset Telenor's incremental cost of providing certain defense-related services, coastal radio, and services for the Arctic island of Spitsbergen.

¹³ Although Norway does not belong to the EU, it is a member of the European Economic Area (EEA). Under the framework of the EEA Agreement, Norway must conform its telecommunications and competition laws and regulations to EU requirements.

Telenor ASA and its subsidiaries are subject to strict oversight of their operations by the PT, an entity that by law and regulation must exercise its regulatory functions independently of other government agencies within the national legal and regulatory framework.¹⁴ Telenor ASA, because of its position in Norway's land-line and mobile services marketplace, is subject to comprehensive regulation to ensure the openness to competition of its domestic basic services network. The PT reviews Telenor ASA's compliance with interconnection, accounting separation, transparency, cost-based pricing, non-discriminatory access, unbundling, and other requirements imposed on the corporation's domestic operations to promote competition and preclude any potential abuse of market power.

Norway has one of Europe's most liberal licensing regimes for new entrants to its telecommunications markets. Telenor ASA's share of fixed-line services, for example, has declined steadily and now stands at only 77% of the business market and 68% of the residential market. With the exception of certain mobile telephone services, no license is required for new entrants. The government has awarded numerous licenses for mobile telephone services, and imposes no restrictions on the basis of nationality.¹⁵ In view of these competitive conditions and the de-regulated market for international calls between Norway and the United States, the FCC

¹⁴ See note 7 above and the accompanying text. For example, the director general of the PT is a civil servant and not a political appointee of the government in power.

¹⁵ As a result, foreign firms, including several with U.S. direct or indirect ownership, are active in all of the major telecommunications market segments in Norway. Examples include international service provided in Norway by MCI WorldCom AS and SBC's indirect participation in the Norwegian market through its affiliate, TeleDanmark (owner of ELTeleOest). The National Trade Estimates Report of the U.S. Trade Representative and other publicly accessible information regarding access by U.S. companies to world markets have identified no impediments to foreign participation in Norway's telecommunications services markets, nor any complaints regarding access to the Norwegian market by U.S. carriers.

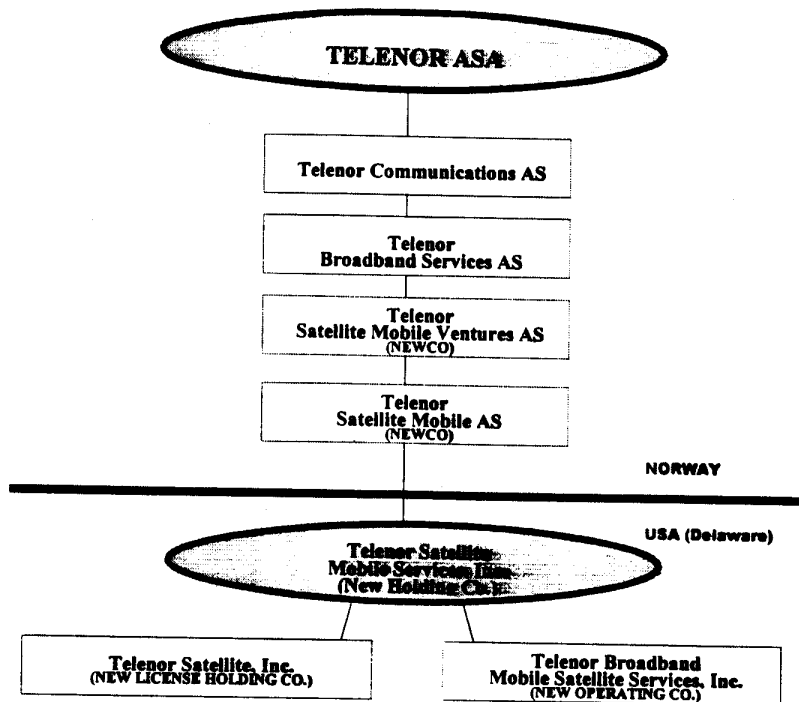
has granted U.S. carriers blanket approval to provide switched basic services over authorized private lines to/from Norway, outside the scope of the international settlements system.¹⁶

II. DESCRIPTION OF THE PROPOSED TRANSACTION

The Applicants seek approval for the acquisition by TSMS of the CMC business, involving the purchase of substantially all the assets of CMC from the Assignor, COMSAT, and the assignment of CMC-related FCC licenses and authorizations to Telenor Satellite (the "Assignee"). The contemplated acquisition would occur under the terms of an Asset Purchase Agreement entered into on March 27, 2001 by and between COMSAT, TSMS, and Telenor Broadband Services AS (as guarantor).

All of the Telenor entities in the proposed ownership chain are 100% ultimately owned by Telenor ASA. TSMS wholly owns two other Delaware corporations, including the Assignee, Telenor Satellite, which will hold the FCC licenses and authorizations, and a separately incorporated operating subsidiary, Telenor Broadband Mobile Satellite Services, Inc. A corporate structure flow chart of the Telenor entities involved in the acquisition appears below:

¹⁶ See *Applications of AT&T Corp. et. al.*, Order and Authorization, 13 FCC Rcd 11063 (1998) (also recognizing below-benchmark accounting rates).



When the proposed transaction is complete, Telenor will pay \$116,500,000 in immediately available funds to the Assignor, subject to adjustment thereafter following calculation of the final net asset amount. The Assignor will continue to exist and operate its other lines of business after closing of the proposed CMC sale. However, CMC's business and assets will transfer at closing to TSMS and its two subsidiaries. In particular, the Section 214 authorizations and Title III licenses identified in Attachment 1 of this Application and described in the following section will transfer at closing to Telenor Satellite.

III. FCC AUTHORIZATIONS TO BE TRANSFERRED PURSUANT TO THIS APPLICATION

A. Current Licenses and Authorizations

COMSAT, through its business unit CMC, holds various FCC licenses and authorizations that will be assigned to Telenor Satellite upon completion of the proposed assignment. Specifically, COMSAT proposes to assign certain licenses for earth station facilities and certain

Section 214 authorizations and experimental authorizations, all as described in the relevant applications submitted in conjunction with this filing. A current list of the CMC-related COMSAT licenses and authorizations is provided in Attachment 1.

B. Request for Approval of Additional Authorizations

While the applications for approval of these assignments are intended to be complete, the licensees involved in this proposed transaction may have on file, and may file for, additional authorizations for new or modified facilities that the FCC may grant during the pendency of the assignment applications. Accordingly, the Applicants request that the grant of the assignment applications include authority for assignment to Telenor Satellite of:

- (1) any authorization issued to COMSAT/CMC during the pendency of the Commission's consideration of the assignment applications or during the period required for consummation of the assignment following approval; and
- (2) applications that will have been filed by COMSAT/CMC and that are pending at the time of consummation of the proposed assignment.

Such action would be consistent with prior Commission decisions.¹⁷

C. Blanket Exemption to Cut-Off Rules

Pursuant to Sections 25.116(b)(3) and 1.933(c) of the Commission's rules, the Applicants request a blanket exemption from any applicable cut-off rules in cases where COMSAT/CMC files amendments to pending Part 25 or other applications to reflect the consummation of the proposed assignment. The exemption is requested so that amendments to pending applications

¹⁷ See *Applications of PacifiCorp Holdings, Inc. and Century Telephone Enterprises, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 8891, 8915-16 (1997) ("*PacifiCorp-Century Order*"); *Applications of Pacific Telesis Group and SBC Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 2624, 2665 (1997) ("*SBC-PacTel Order*"); *Applications of Craig O. McCaw and American Telephone and Telegraph Co.*, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5909 n.300 (1994) ("*AT&T-McCaw Order*").

reporting the assignment would not be treated as major amendments requiring a second public notice period. The overarching scope of the transaction between COMSAT/CMC and TSMS demonstrates that any ownership changes that result with respect to any particular pending application are part of a larger assignment undertaken for a legitimate business purpose.

Grant of an exemption from the cut-off rules would be consistent with previous FCC decisions routinely granting a blanket exemption in cases involving large transactions.¹⁸ In previous cases in which it has granted a blanket exemption, the Commission has “considered two factors: (1) whether the proposed transaction ha[s] a legitimate business purpose, and (2) whether the change in ownership otherwise serve[s] the public interest.”¹⁹ This Application is submitted for a legitimate business purpose with no evidence of an improper attempt to profit from the sale of the Application.²⁰ Further, as set forth in Section V below, the proposed assignment to Telenor Satellite of COMSAT/CMC’s licenses and authorizations would serve the public interest and promote competition.

IV. QUALIFICATIONS AND ELIGIBILITY OF THE TRANSFEREE

Telenor Satellite is financially, technically, and legally qualified to hold the FCC licenses necessary to operate the CMC business, in conjunction with the other Telenor U.S. subsidiaries established by Telenor Broadband for this purpose.

¹⁸ See, e.g., *Applications of ICO-Teledesic Global Limited*, Memorandum Opinion, Order and Authorization, DA 01-6, 2001 LEXIS 90, ¶ 12-14 (rel. Jan. 9, 2001) (“*ICO-Teledesic Order*”), *PacifiCorp-Century Order*, 13 FCC Rcd at 8915; *AT&T-McCaw Order*, 9 FCC Rcd at 5909 n.300; *Applications of Centel Corporation and Sprint Corporation*, Memorandum Opinion and Order, 8 FCC Rcd 1829, 1833 (1993).

¹⁹ *ICO-Teledesic Order* at ¶ 12.

²⁰ See *id.* at ¶ 13 (“With respect to the first factor, the Commission’s overriding concern is whether the applicant . . . has attempted to profit solely from the sale of an application”).

A. Financial and Technical Qualifications

As detailed above,²¹ Telenor Broadband, the indirect sole owner of Telenor Satellite, is a leading global supplier of mobile satellite telecommunications services. With Telenor ASA's approximately \$4 billion in annual sales revenue, Telenor unquestionably is financially and technically qualified to operate the CMC business through the U.S. subsidiaries that it has created for this purpose.

B. Telenor Satellite Is Legally Qualified to Hold the CMC Licenses

Telenor Satellite is also legally qualified to hold both the Section 214 authorizations and Title III licenses that CMC proposes to assign to it.

Telenor Satellite's legal eligibility to hold CMC's Section 214 authorizations is addressed in the Section 214 assignment application that the Applicants have filed separately with the Commission.²² The proposed holding by Telenor Satellite of CMC's Title III licenses is also consistent with Section 310,²³ and the Applicants hereby request a declaratory ruling to that effect, including a finding that the proposed assignments will serve the public interest.

Under the FCC's recently-released Order approving the merger between Deutsche Telekom and VoiceStream, "indirect ownership of [a] licensee by a foreign government . . . should be addressed only under Section 310(b)(4)."²⁴ There the Commission noted that Section

²¹ See Section I.B above.

²² A copy of the Section 214 application is appended as Attachment 1.

²³ 47 U.S.C. § 310.

²⁴ *Applications for Consent to the Transfer of Control of Licenses and Authorizations by Deutsche Telekom AG and VoiceStream Wireless Corp., et. al.*, Memorandum Opinion and Order, FCC No. 01-142, IB Docket No. 00-187, ¶ 33 (rel. April 27, 2001) ("*Deutsche Telekom-VoiceStream Order*").

310(b)(4)'s plain language authorizes the FCC to analyze the public interest implications of, and permits the FCC to approve, requests to hold licenses from "any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted . . . by a foreign government or representative thereof . . ." ²⁵ Telenor Satellite is a U.S. corporation, wholly owned by TSMS, a U.S. corporation whose ultimate parent, Telenor ASA, is a publicly traded Norwegian corporation owned in large part by non-U.S. shareholders, including the Kingdom of Norway. Consistent with the foregoing and with the approach to Section 310 adopted in the *Deutsche Telekom-VoiceStream Order*, Section 310(b)(4) governs the proposed transaction between CMC and TSMS and the Commission's evaluation of this Application. ²⁶

For guidance in such cases, the Commission has referred to the "WTO Agreement on Basic Telecommunications Services, which seeks to promote global markets for telecommunications so that consumers may enjoy the benefits of competition."²⁷ It was this historic agreement that prompted the FCC in 1997 to adopt liberalized rules concerning the participation of foreign entities in the domestic telecommunications market.²⁸ Of course, because

²⁵ *Id.* at ¶ 34; 47 U.S.C. § 310(b)(4).

²⁶ See *Deutsche Telekom-VoiceStream Order* at ¶ 44; see also generally ¶¶ 33-48. Because the proposed assignment involves the type of indirect foreign ownership structure addressed by Section 310(b)(4), the transaction falls outside the scope of Section 310(a) and (b)(1)-(3). *Id.* at ¶ 44.

²⁷ *Vodafone Airtouch, plc and Bell Atlantic Corporation, for Consent to Transfer of Control or Assignment of Licenses and Authorizations*, 15 FCC Rcd 16507 at ¶13 (2000). The commitments undertaken as a result of the WTO basic telecommunications services negotiations are incorporated into the General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS. *Fourth Protocol to the General Agreement on Trade in Services* (WTO 1997), 36 I.L.M. 354, 366 (1997).

²⁸ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*,
(Continued...)

Telenor Satellite's ultimate parent company is a Norwegian corporation, Telenor Satellite receives the benefit of the FCC's presumption that "indirect investments by investors whose home markets are in WTO Member countries" are consistent with the public interest.²⁹

The Commission's *Deutsche Telekom-VoiceStream Order* also makes plain that the presumption favoring entry applies equally to any of the several ownership structures set forth in Section 310(b)(4).³⁰ In such cases, the FCC may—as part of its overall public interest analysis—consider whether the indirect foreign ownership poses any "special" risk to competition beyond the traditional considerations accorded to any entity's position in the relevant market.³¹ Here, as noted in Section I.B.2.a. above, Telenor enjoys no preferential access to capital, no special subsidies, no favorable regulatory treatment, and no other competitive advantages by virtue of its ownership.³² Commission precedent therefore provides that the 79% shareholding which the Kingdom of Norway has in Telenor ASA, the ultimate parent of the U.S. subsidiaries through which holding of the Title III licenses will occur in this case, in and of itself, "does not contravene the public interest."³³

(...Continued)

Report and Order and Order on Reconsideration, 12 FCC Rcd. 23891 at ¶ 2 (1997) ("Foreign Participation Order").

²⁹ *Id.* at ¶ 98 (1997); *see also id.* at ¶ 117, (clarifying that the Commission will apply to mobile services "the same standard . . . that we apply to other basic telecommunications services under Section 310(b)(4) . . .").

³⁰ *See Deutsche-Telekom-VoiceStream Order* at ¶ 45 (FCC's "review of section 310 as a whole . . . best support[s] an interpretation that treats foreign individuals, corporations, and governments in the same manner"); *see also id.* at ¶¶ 33, 39, 42-43.

³¹ *Id.* at ¶ 50.

³² *See id.* at ¶¶ 60-72.

³³ *Id.* at ¶ 78.

Accordingly, the remainder of the Commission's review efforts should turn to the standard elements of any public interest analysis under Section 310(b)(4). Section V, below, demonstrates that Telenor Satellite's acquisition of CMC's licenses and authorizations will satisfy that test. In particular, the proposed creation of a new facilities-based global competitor in the U.S. international mobile services arena will provide U.S. consumers with more varied and competitively priced service offerings and options.

Thus, Telenor's proposed acquisition of CMC's assets, which is the basis for the Application and the proposed assignment of licenses, readily satisfies the FCC's public interest standard under Section 310(b)(4).

V. THE PROPOSED ACQUISITION WILL CLEARLY SERVE THE PUBLIC INTEREST AND PROMOTE COMPETITION IN THE U.S. TELECOMMUNICATIONS MARKETPLACE

Sections 214(a) and 310(d) of the Communications Act require applicants seeking Commission consent to an assignment of FCC licenses and authorizations to demonstrate that a grant would be consistent with the "public interest, convenience and necessity."³⁴ In making this determination and its associated findings, the Commission weighs "the potential public interest harms of the proposed transaction against the potential public interest benefits to ensure that the Applicants have demonstrated that, on balance, the proposed transaction serves the public interest and convenience."³⁵ When reviewing applications in connection with mergers or acquisitions, the FCC considers four factors:

³⁴ See 47 U.S.C. §§ 214(a), 310(d).

³⁵ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, Memorandum Opinion and Order, FCC No. 01-12, CS Docket No. 00-30, ¶ 19 (rel. Jan. 22, 2001) ("*AOL-Time Warner Order*") (citing *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of* (Continued...))

(1) whether the transaction would result in a violation of the Communications Act or any other applicable statutory provision; (2) whether the transaction would result in a violation of Commission rules; (3) whether the transaction would substantially frustrate or impair the Commission's implementation or enforcement of the Communications Act, or would interfere with the objectives of the Communications Act or other statutes; and (4) whether the transaction promises to yield affirmative public interest benefits.³⁶

As set forth in the preceding section, Telenor Satellite possesses all the requisite qualifications to hold FCC licenses and authorizations. Consequently, the proposed assignment of the CMC-related licenses and authorizations outlined in Section III, above, from COMSAT to Telenor Satellite, satisfies the first three factors of the Commission's public interest analysis: the proposed assignment will not violate the Communications Act, any other applicable statute, or FCC rule, nor will it frustrate or impair the Commission's implementation of the relevant statutory provisions or their underlying policy objectives.

In addition, the proposed assignment will enhance competition in several respects and offer substantial public interest benefits. Moreover, the proposed transaction will not result in

(...Continued)

Corporations Holding Commission Licenses and Lines, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14736 (1999) ("*SBC-Ameritech Order*"; *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18031-32 (1998) ("*MCI-WorldCom Order*").

³⁶ *ICO-Teledesic Global Limited Application for Transfer of Control of Space Station License of Teledesic LLC to ICO-Teledesic Global Limited*, Memorandum Opinion, Order and Authorization, DA 01-6, File Nos. SAT-T/C-20000531-00097 *et al.*, 2001 FCC LEXIS 90 (I.B. rel. Jan. 9, 2001) (citing *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9816, 9820-21 (2000) ("*AT&T-MediaOne Order*").¹ See also, *e.g.*, *Lockheed Martin Corporation, COMSAT Government Systems, LLC, and COMSAT Corporation Applications for Transfer of Control of COMSAT Corporation*, Order and Authorization, FCC 00-277, 21 CR 745, 2000 FCC LEXIS 3957, at ¶ 15 (rel. July 31, 2000); *AOL-Time Warner Order* at ¶ 20 (citing *AT&T-MediaOne Order*, 15 FCC Rcd at 9820-21; *SBC-Ameritech Order*, 14 FCC Rcd at 14737-38).

any lessening of competition in relevant markets—largely because the proposed Assignee and its Norwegian indirect owner, Telenor Broadband, currently do not compete in either the U.S. domestic or U.S. international telecommunications marketplace as those markets are defined by the Commission.³⁷

A. Because Norway Is a WTO Member Country, Telenor Satellite's Application Is Presumed to Serve the Public Interest

The Commission has established a presumption that acquisitions of FCC-licensed common carriers by U.S. subsidiaries of firms based in WTO member countries—such as Norway—will enhance competition and thus serve the public interest as required by Section 310(b)(4).³⁸ The Applicants demonstrate below that the proposed acquisition will in fact generate significant public interest benefits without any potential offsetting harm to competition in the market for U.S. international services. Furthermore, the proposed acquisition is fully consistent with the other considerations, such as law enforcement and national security policy, that the Commission has incorporated in its public interest analysis under Section 310(b)(4).³⁹

B. The Proposed Transaction Will Deliver Significant Benefits to U.S. Consumers

The Commission's analysis of the effects of a proposed acquisition on conditions of competition has been guided both by traditional antitrust principles and by the public interest mandate of the Communications Act. Thus, the Commission has considered not only whether a proposed transaction may substantially lessen competition in the relevant markets, but also whether that particular transaction may improve the competitive forces at work in those

³⁷ See note 56 below and accompanying text.

³⁸ See *Foreign Participation Order*, 12 FCC Rcd. 23891 at ¶ 98.

³⁹ See *id.* at ¶¶ 61-66.

markets.⁴⁰ Consequently, the Commission would find a transaction to be pro-competitive if “the benefits that enhance competition” outweigh the harms to competition.⁴¹

Given this approach, the competition analysis required to evaluate proposed transaction is simple and straightforward: there are no harms to counterbalance the important competitive benefits from the proposed acquisition of the CMC business by TSMS.

1. The New Entity Will Be Able to Achieve Significant Efficiencies and Cost Savings Due to Its Global Network and Infrastructure

In reviewing prior transactions, the Commission has determined that efficiencies created by the development of a broader network, including reasonably justified cost savings and economies of scale in other related areas, provide a public interest benefit.⁴² The integration of the current Telenor and CMC networks would allow the combined business entity to provide

⁴⁰ *Applications of NYNEX Corp. Transferor, and Bell Atlantic Corp. Transferee, for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, 19987 (1997) (“*Bell Atlantic-NYNEX Order*”); *See AOL-Time Warner Order* at ¶ 21 (citing *MCI-WorldCom Order*, 13 FCC Rcd at 18032-33 (1998)).

⁴¹ *Bell Atlantic-NYNEX Order*, 12 FCC Rcd 19987.

⁴² *Applications of SBC Communications Inc. and BellSouth Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, DA 00-2223, WT Docket No. 00-81 at ¶ 48 (rel. Sept. 29, 2000) (“*SBC-BellSouth Order*”) (describing as “reasonably justified” and a public interest benefit the applicants’ claimed cost savings to be derived through the creation of a national network); *Applications of Vodafone Airtouch, PLC and Bell Atlantic for Consent to Transfer of Control or Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd 16507 (adopted March 30, 2000) (agreeing with applicants that combination of networks would enable them to realize significant cost savings) (“*Vodafone-Bell Atlantic Order*”); *see also Applications of AirTouch Communications, Inc. Transferor, and Vodafone Group, PLC. Transferee, for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, 14 FCC Rcd 9430 at 9438 (rel. June 22, 1999) (“*AirTouch-Vodafone Order*”) (referring to the efficiencies claimed by the parties including cost savings from expanded marketing opportunities due to the resulting global footprint, “[w]e determine that at least several of the [applicants’] claimed benefits are likely to occur. . .”).

global services entirely through its own land earth stations, allowing it to achieve significant operating efficiencies and increased cost competitiveness. These improvements would enable the new entity to increase the value of services it would offer its customers

a) Global Coverage

Although Telenor Broadband currently offers a full range of Inmarsat services, it has coverage of only three of the four Inmarsat ocean regions—Indian Ocean, Atlantic Ocean East, and Atlantic Ocean West—through its EIK land earth station in Norway. In contrast, CMC's U.S.-based earth stations do not provide coverage of the Indian Ocean Region but do, unlike EIK, cover the Pacific Ocean Region (through the Santa Paula, California LES). Thus, the two companies must currently contract with other LES operators through their networks for Inmarsat satellite access in these regions.

By integrating CMC's two U.S. earth stations into its mobile satellite services network, Telenor would be able to provide seamless, global service offerings through facilities that it owns and operates itself. Uniting Telenor and CMC within a single global entity would eliminate the current need of Telenor Broadband to outsource the Pacific Ocean Region portion and CMC to outsource the Indian Ocean Region portion of their respective Inmarsat network service platforms. The resulting economies of scale would benefit both current and prospective U.S. customers on the basis of more efficient operations, more competitive pricing, and improved availability of capital for network improvements.

b) Call Routing Efficiencies

The combined network will also realize significant cost savings through improved call routing efficiencies. For example, rather than directing traffic through EIK regardless of customer location, Telenor would route certain traffic, particularly in the Americas, through the

Southbury, Connecticut or the Santa Paula, California, earth stations of CMC. In general, traffic would go through the most efficient, lowest cost route, utilizing the physical location and other attributes of the three earth stations in the combined network to their optimal advantage. Moreover, such flexibility will add redundancy to the network, enabling Telenor to improve its responsiveness to service outages or other performance problems that occur in network links. Telenor estimates that it would achieve a considerable annual cost savings by improving its call routing efficiency.

c) Volume Discounts

Telenor would also realize additional initial cost savings from the increased volume of traffic the combined entity would carry over the Inmarsat system. The standard LESO agreement with all LES operators in the Inmarsat system provides for volume-based discounts on right-of-use charges for space segment capacity. Telenor estimates a considerable cost savings from the volume discounts that it anticipates the combined entity would be eligible to receive from Inmarsat under this standard agreement. If the proposed transaction is approved, Telenor would likely also qualify for improved pricing from terrestrial network providers utilized for call completion purposes. Again, the value to customers of the services offered would improve as a result of these cost efficiencies.

2. The Economies of Scale from the Acquisition Would Significantly Benefit Customers of the Combined Entity

As a result of the cost savings and other benefits derived from improved economies of scale, the combined Telenor-CMC entity would have the ability to offer more competitively priced international mobile satellite services to U.S. customers, as well as to invest in new, expanded and innovative service offerings that would benefit U.S. consumers. At a minimum, the combined entity would have greater flexibility and capability to respond to the aggressive

pricing of its numerous competitors. As discussed below, pricing of international mobile satellite services in the United States has become extremely competitive over the last several years. Without the economies of scale, including the cost savings, generated by the proposed acquisition, CMC's long term ability to provide customers an attractive alternative to the many other Inmarsat and non-Inmarsat international MSS providers with which it competes would be increasingly open to question.

3. The New Entity Will Have Greater Ability to Provide U.S. Customers with New Services, Features and Applications

The Commission has found that new service offerings, plans or features that result from a transaction confer a public interest benefit,⁴³ as might transactions which bring together complementary management or technological and engineering skills.⁴⁴ The proposed acquisition by TSMS of the CMC business would provide U.S. customers with increased and enhanced service offerings, while also improving the managerial, technological, and operational engineering resources and synergies upon which the combined entity would be able to draw.

Telenor has consistently led the industry in the deployment of digital and high capacity services over the Inmarsat system. For example, it was the first LES operator in the Inmarsat system to install a fully-automated LES based on Norwegian cellular technology. In November 1999, Telenor became the first LES operator to complete beta testing and receive certification to

⁴³ *SBC-BellSouth Order* at ¶ 48 ("demonstrable and verifiable public benefits" will result from transaction, including "new service plans [and] new features.").

⁴⁴ *AOL-Time Warner Order*, at ¶ 306 ("the addition of AOL's expertise in making content commercially acceptable to consumers over the Internet could very well advance the migration of Time Warner's name brand content to digital interactive platforms"); *Vanguard Cellular Systems Inc. and Winston, Inc. Transfer of Control*, 14 FCC Rcd 3844 (1999) (transaction serves the public interest based on system wide system-wide efficiencies such as uniform engineering and management, common purchasing, and integrated marketing efforts).

commence commercial operation of Inmarsat's M4 satellite service (branded as the Global Area Network, or "GAN").⁴⁵ U.S. consumers of international mobile satellite services would benefit significantly from the considerable experience that the combined entity would have in providing GAN services. In addition, the combined entity would have greater resources and capability to introduce Inmarsat F services (the next generation of maritime data and voice services from Inmarsat) in the U.S. international market than could CMC operating on its own.

As another example, Telenor Broadband currently offers heavy users of maritime communications a total communications solution, SeaLink. SeaLink is a permanent satellite link for data transmissions and establishes customized communications solutions between a ship or fleet of mobile sites and one or more land based sites. The proposed addition of CMC's network assets would enable Telenor to expand this service offering beyond its current regional footprint, to the benefit of U.S.-based customers whom Telenor currently does not serve. CMC's only current equivalent service offering lacks global capability. U.S. consumers would clearly benefit from the seamless worldwide service offering that the combined entity would be able to provide them in this market segment.

The complementary nature of the Telenor Broadband and CMC networks would also benefit U.S. customers in other important respects. The launch of fourth generation Inmarsat I-4 satellites planned for 2004 will permit the delivery of 432Kbps broadband service, but may require significant investment by LES operators in the development and introduction of delivery platforms. The facilities based global network that would be created by Telenor's proposed acquisition of CMC would in the future enable the combined entity to deploy Inmarsat I-4

⁴⁵ GAN provides users with worldwide, easy-to-operate, mobile communications capability at speeds of up to 64 Kbps for data, comparable to a fixed network ISDN line.

broadband services more swiftly and efficiently than either company could achieve on its own, again with tangible benefits for U.S. consumers.

In addition to the introduction of new services and products, the combination of the Applicants' management and technical strengths will provide operational, marketing, and customer service benefits. For example, by operating fully staffed, "in house" call centers and other customer interactive services in both U.S. and European time zones, the combined entity could improve its customer assistance capabilities on a 24-hour, seamless basis.

4. The Proposed Transaction Will Enable the Combined Entity to Keep Pace in a Highly Competitive Marketplace with Numerous Alternative Mobile Service Providers

The Commission has determined in prior decisions that the creation of a telecommunications provider with expanded network coverage to compete with existing competitors constitutes a transaction-specific public interest benefit.⁴⁶ U.S. customers likewise benefit from an expanded international network. As noted above, competition in the U.S. market for international mobile services is fierce. Customers have a wide range of competitive alternatives, involving a number of different communications technologies. The proposed acquisition of CMC's assets by TSMS would enable the combined entity to compete more vigorously in this marketplace by establishing a fully-integrated global services platform.

⁴⁶ *SBC-BellSouth Order* at ¶ 48 ("the creation of another national . . . competitor constitutes a clear, transaction-specific public interest benefit") *Vodafone/Bell Atlantic Order*, 15 FCC Rcd 16507 (creation of another national wireless competitor a public interest benefit); *Applications of Aerial Communications, Inc., Transferor, and Voicestream Wireless Holding Corporation, Transferee, for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC 10089, ¶ 44 (rel. March 31, 2000) (" . . . GSM subscribers will benefit from the expanded footprint . . . and . . . all mobile phone users needing access throughout the nation will benefit significantly from the creation of another competitor with a near-nationwide footprint.").

In addition to Inmarsat based services, competition also comes from HF, VHF, and other maritime radio service providers, including Globe Wireless and MariTEL, as well as low-earth orbit satellite system service providers such as Globalstar, the recently-revived Iridium, and Orbcomm, plus regional satellite system service providers such as Motient, ACeS, and TMI. In response to competitive pressures, combined with the migration of traffic from analog to digital formats in certain market segments, prices for international mobile services have declined steadily in recent years. This trend will almost certainly continue as new service offerings improve and the latest technologies and alternative technology service providers establish a stronger presence in the market.

To support U.S. consumers' continued access to a variety of competitive choices, mobile satellite service providers must respond to market realities. Major competitors of CMC and Telenor Broadband have recently consolidated their operations in order to increase their network coverage and achieve greater network efficiencies. Considering only the Inmarsat LES operators, two noteworthy consolidations have occurred. The Canadian-based Stratos Global Corporation recently completed its acquisition of British Telecom's Aeronautical and Maritime Division, which operates Inmarsat assets at land earth stations in England and New Zealand.⁴⁷ Stratos' President and CEO said of the acquisition, "the transaction expands the geographic reach of our service offerings, gives us strong entry into the North Sea oil and gas market, adds to our maritime capability and expands our portfolio of value-added products."⁴⁸

⁴⁷ "Stratos Complete Acquisition of Satellite Assets from British Telecom," Stratos News Release, Jan. 7, 2001 (http://www.stratos.ca/newsroom/pr_detail.cfm?PRESS_RELEASE__PR_ID=2001010801).

⁴⁸ *Id.*

In addition, Australian-based Telstra and Netherlands-based Station 12 (owned by KPN) recently merged their mobile satellite communications businesses and have now renamed the combined entity "Xantic."⁴⁹ Xantic offers a broad range of satellite communications services on a global basis, including direct Inmarsat coverage in all four ocean regions through two land earth stations, in the Netherlands and Australia, respectively.⁵⁰ The economic benefits of such combinations include significant cost reductions and more effective traffic management. Using their new global platforms, Stratos and Xantic are expected to deploy more competitive pricing options, individualized service offerings, and value-added services, deriving maximum benefit from their scale efficiencies and geographic coverage in comparison to other LES operators.

The proposed acquisition of CMC's assets by Telenor will give the combined Telenor-CMC entity the economies of scale to keep pace competitively with Stratos and Xantic, as well as with other Inmarsat service providers and global service providers that use non-Inmarsat platforms. Moreover, the proposed transaction will permit the combined entity to prepare for competition that will emerge from new regional and global satellite systems currently under development.⁵¹

⁴⁹ "About Station 12" (http://www.station12.com/ws?pg=gen_company.html&SID=493412, April 18, 2001).

⁵⁰ "Three Enterprises Combine to form global satcom leader," Xantic Press Release March 19, 2001 (<http://www.station12.com/ws?pg=pressarticle.html&SID=493546&anr=21164>).

⁵¹ Notable among these future potential competitors is the planned New ICO system. See "McCaw Sets Sights Higher - Cellular Maven Intends to Build Internet, Satellite Phone Network," *The Washington Post* (April 21, 2001) at B1.

5. The Proposed Acquisition Will Promote the Continued Presence and Development in the United States of CMC's Two Earth Station Facilities

In analyzing the public interest benefits of a proposed transaction, the Commission also considers whether the combined entity will be able to operate more effectively than the parties could if they continued to operate independently.⁵² Apart from the efficiencies, cost savings, and increased product offerings that the proposed acquisition of CMC's business by Telenor could produce, the U.S. economy would also benefit in broader respects from this transaction.

As described in Section II, above, Telenor has made a strong commitment to the success and expansion of the Inmarsat satellite system as part of its core business. Also as noted above, CMC lacks coverage of all four Inmarsat ocean regions through its own ground facilities. The cost-saving efficiencies and other economy of scale benefits that the combined entity could realize would not be possible without the expanded network coverage from the proposed acquisition.

In particular, TSMS could put the two CMC earth stations to their highest value use as integral parts of an Inmarsat-based platform with global coverage over fully-integrated facilities. Telenor has the desire and ability to provide the investment and expertise necessary to further develop and enhance CMC's U.S. network assets, and to keep both of its U.S. earth stations actively engaged in the mobile satellite services business with the expertise of U.S. employees. In addition, the combined entity could draw upon the substantial research and development

⁵² *AT&T-Media One Order*, 15 FCC Rcd 9816, para. 154 & 160 ("Our analysis focuses on demonstrable and verifiable public interest benefits that could not be achieved if there were no merger. . . . We find . . . that the merger is likely to accelerate competition among providers . . .") (citing *SBC-Ameritech Order*, 14 FCC Rcd 14825, para. 255).

capabilities of both CMC and Telenor Broadband for facilities upgrades and network improvements.

C. The Proposed Transaction Poses No Risk of Harm to Competition in Any Relevant Market

Against the range of benefits that the proposed acquisition of CMC's assets by TSMS would deliver to U.S. consumers, the proposed transaction would not result in any harm to competition.

1. The Relevant Geographic and U.S. Service Markets Are Limited

The Commission analyzes the competitive effects of proposed mergers and acquisitions within relevant product and service segments of the U.S. telecommunications marketplace, including domestic and U.S. international services.⁵³ With respect to international service providers, the Commission already has determined that it "need not analyze the impact of [a] merger on competition in the provision of satellite services to foreign countries that does not involve service to or from the United States."⁵⁴

⁵³ As the Commission noted in approving the Lockheed Martin-COMSAT transaction:

[i]n evaluating the competitive effects of the proposed transaction, the Commission considers both the relevant product and geographic markets. For telecommunications service providers, the Commission has determined that the relevant product markets can include both service to the U.S. domestic telecommunications markets and service between the U.S. and international telecommunications markets.

Applications for Transfer of Control of Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Government Systems, 15 FCC Rcd 22910 (2000) at ¶ 17 ("Lockheed Martin-COMSAT Order"), citing *Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI to WorldCom*, 13 FCC Rcd 18025, 18039, 18070 (1998).

⁵⁴ *Id.* at ¶ 18.

Rather, in such cases, the Commission evaluates the competitive effects on a country-by-country basis, for service between the U.S. and specific foreign countries, where service to each foreign country from the U.S. represents a separate geographic market.⁵⁵ In particular, the Commission has defined "U.S. international services" with precision to mean "all U.S.-billed telecommunications services, including calls that originate in the United States and terminate at a foreign point and calls that originate at a foreign point but are billed by a U.S. carrier, such as international calling cards."⁵⁶

Under this definition, determining the relevant geographic markets for the proposed transaction is straightforward. Neither party currently provides U.S. domestic service,⁵⁷ and only COMSAT/CMC provides any U.S.-originated international service.⁵⁸ Thus, the only significant

⁵⁵ *Id.*

⁵⁶ See *Deutsche Telekom-VoiceStream Order* at ¶ 97 and accompanying footnote. See also *Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI to WorldCom*, 13 FCC Rcd 18025, 18070, n.240 (1998).

⁵⁷ This circumstance may change, subject to relevant FCC approvals. The Commission recently recognized that COMSAT provides no domestic telecommunications services within the United States: "Thus, Lockheed Martin's acquisition of COMSAT would not increase concentration or market power in the provision of satellite services within the domestic U.S." *Lockheed Martin-COMSAT Order* at ¶ 16. CMC does now provide domestic service to a limited number of customers pursuant to applicable STAs, and has applied for authority to provide domestic service over the Inmarsat system. *In the Matter of COMSAT Corporation for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Private U.S. Domestic Land Mobile and Aeronautical Satellite Services via the Inmarsat Ltd. Satellite System*, File No. SAT-ITC-20000605-00103.

⁵⁸ The only mobile satellite services provided by Telenor involving the United States are foreign-based "from mobile" services in which a customer with a mobile earth station terminal outside the United States initiates a call to a fixed receiver or cellular telephone in the United States. Telenor Broadband does not terminate such traffic over its own facilities (since it has no U.S. facilities). Thus, Telenor is not a U.S. carrier of mobile satellite services, nor does it issue bills from a U.S. point of presence (although some of its customers, such as the United Nations, have U.S. billing addresses).

U.S.-based services currently provided by either applicant are the COMSAT/CMC mobile services provided on U.S. international routes via the CMC earth stations in Connecticut and California.

Determining the relevant product market in this case is also a relatively straightforward exercise. International mobile services are provided to U.S. consumers from a variety of competing suppliers using multiple platforms and technologies. The Applicants submit that for purposes of evaluating the effects of the proposed transaction on competition in mobile services, the Commission should use a product market that consists of all mobile services, except for land-mobile services such as cellular service. This market is appropriate because the various forms of mobile service can and do serve as substitutes for each other in the marketplace.

2. Because the Applicants Do Not Compete In the Relevant Market, the Proposed Transaction Cannot Harm the Already Highly Competitive International Mobile Services Marketplace

As noted throughout this submission, while CMC provides mobile satellite services to and from the United States, none of Telenor's MSS originates in the United States and it issues no bills for such services from a U.S. location. The combination of Telenor and CMC therefore will not increase concentration in the U.S. international mobile services market.

As noted above, CMC currently faces intense competition in the U.S. international market from many sources, including mobile satellite service providers using Inmarsat and other satellite systems. Following passage of the Open-Market Reorganization for the Betterment of International Telecommunications ("ORBIT") Act, P.L. 106-180, 114 Stat. 48 (2000), CMC no longer has any exclusivity—or any special legal status whatsoever—for use of Inmarsat space segment to provide U.S. international services. For example, Stratos, a Canadian-based provider

of mobile satellite services, has by far the largest share of U.S.-originated traffic over the Inmarsat system.⁵⁹

In the March 2000 application which led to the *Lockheed Martin-COMSAT Order*, the parties identified the numerous competitors that provide U.S. consumers with service alternatives to CMC's offerings. That recent application still accurately reflects the state of U.S. international mobile services competition:

Today, COMSAT faces a wide range of mobile service competitors for U.S. traffic. These competitors include Globe Wireless and MarITEL using HF and VHF technology, AMSC and TMI using regional MMS services, MSS providers such as GlobalStar and Orbcomm offering handheld voice and data services, providers such as Arinc and GTE Airfone offering terrestrial aeronautical service, FSS providers such as PanAmSat and even cellular providers in coastal areas.⁶⁰ At the same time, COMSAT also is subject to competition from other providers of Inmarsat Ltd. service. Indeed, all 31 other Inmarsat Ltd. land earth station operators ("LESOs"), including seventeen LESOs with global capabilities, are able to compete with COMSAT for U.S.-based Inmarsat Ltd. traffic.⁶¹ Moreover, because many U.S. landline carriers have access to fiber-optic cable capacity that allows them to send Inmarsat Ltd. traffic to any part of the world and link to the Inmarsat Ltd. system via non-U.S.-earth stations, there is no barrier to full competition among LESOs for U.S.-originated traffic even if a LESO does not have a U.S. earth station.

This wide range of competitors has created a fully competitive mobile services market. This is confirmed by declines in COMSAT's market share and prices in recent years. Indeed, COMSAT's share of the mobile services business has declined along with, and faster than, Inmarsat's, which now carries much less than half of all mobile services traffic.

Competition in mobile services also will continue to grow as new competitors, such as Orbcomm and GlobalStar, expand their market presence in the United

⁵⁹ See footnote 47 above and accompanying text.

⁶⁰ "While cellular cannot compete for traffic in deep ocean areas, it does compete in coastal areas, notably for business from cruise ships that spend much of their time within the range of cellular systems. Cellular competition is significant in the Caribbean and the Gulf of Mexico."

⁶¹ "Under the LESO Agreement, the primary contract between LESOs and Inmarsat Ltd., LESOs are free to compete with each other, as IDB/Stratos already does with COMSAT. Other LESOs include British Telecom, France Telecom and KDD."

States and abroad. In addition, the WTO Agreement ensures that foreign companies can access the United States to compete with COMSAT. Among others, British Telecom and Cable & Wireless have indicated that they intend to provide mobile services in the United States and TMI already is doing so.⁶² In the face of such burgeoning competition, COMSAT plainly cannot exercise any form of market power.

In view of the strong, expanding, and varied alternative sources of mobile service to and from the United States, TSMS's proposed acquisition of the CMC business will not only leave the Applicants' combined share of the relevant U.S. market essentially unchanged, but also continue to expose the new entity to a fully competitive market.

D. Any Executive Branch Concerns Regarding National Security or Law Enforcement Will Be Fully Addressed Through Cooperation with the Relevant Federal Agencies and the Adoption of Appropriate Safeguards

The Commission's public interest evaluation under Section 310(b)(4) includes consideration of potential national security, law enforcement, foreign policy, and trade policy issues and concerns.⁶³ The Commission "accord[s] deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to [such issues] that are relevant to an application pending before [the Commission]."⁶⁴ Thus, the Commission's public interest analysis may include "consultation with the appropriate Executive Branch agencies regarding those concerns."⁶⁵

⁶² "See, e.g., Comments of BT North America, Inc., IB Docket No. 96-111, filed Aug. 21, 1997, at 3-4 (claiming that the WTO Agreement obligates the Commission to allow companies from WTO-member countries to provide Inmarsat-based services in the United States)."

⁶³ See *Foreign Participation Order*, 12 FCC Rcd at 23940 ¶¶ 61, 65 & 113.

⁶⁴ *Id.* at ¶ 63.

⁶⁵ *Id.* at ¶ 113.

Mindful of this element of the Commission's public interest review, the Applicants already have initiated discussions with executive branch officials regarding potential law enforcement and national security concerns. Following the practice established in prior cases before the Commission involving foreign-owned corporations, the Applicants propose to reach agreement with the Department of Justice ("DOJ") and Federal Bureau of Investigation ("FBI") to address fully their possible concerns.⁶⁶ Specifically, the DOJ and FBI have sought to ensure that similar transactions do not:

... impair the U.S. government's ability to satisfy its obligations to U.S. citizens to: (1) carry out lawfully-authorized electronic surveillance of domestic U.S. calls or calls that originate or terminate in the United States; (2) prevent and detect foreign-based espionage and electronic surveillance of U.S. communications, which would jeopardize the security and privacy of such communications, and could foreclose prosecution of individuals involved in such activities; and (3) satisfy the National Security Emergency Preparedness Act and U.S. infrastructure protection requirements.⁶⁷

The Applicants believe that their ability to reach an agreement with the DOJ and FBI will benefit from CMC's significant prior experience in assisting the FBI and other government agencies, as well as from Telenor ASA's and its subsidiaries' prior experience working with

⁶⁶ See, e.g., Memorandum Opinion and Order, *Merger of MCI Communications Corp., and British Telecommunications, plc*, 12 FCC Rcd 15,351 (1997) (agreement adopted by the Commission, but merger not consummated); Memorandum Opinion and Order, *AirTouch Communications, Inc. and Vodafone Group, plc*, DA No. 99-1200, 1999 WL 413237 (rel. June 22, 1999); Memorandum Opinion and Order, *AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co., LLC and TNV [Bahamas]*, 14 FCC Rcd (Oct. 29, 1999); Order and Authorization, *SatCom Systems, Inc. and TMI Communications and Company, L.P.* (rel. Nov. 30, 1999); Memorandum Opinion and Order, *Vodafone AirTouch PLC and Bell Atlantic Corp.*, DA No. 99-2451, 2000 WL 332670 (rel. Mar. 30, 2000); Memorandum Opinion and Order, *Aerial Communications, Inc. and Voicestream Wireless Holding Corp.*, 15 FCC Rcd 10,089 (2000); Memorandum Opinion and Order, *DiGiPH PCS, Inc. and Eliska Wireless Ventures License Subsidiary I, L.L.C.*, No 151639 (rel. Dec. 13, 2000).

⁶⁷ Petition to Adopt Conditions to Authorization and Licenses, *VoiceStream Wireless Corporation, Powertel, Inc., and Deutsche Telekom AG*, submitted by DoJ and FBI in DA 00-2251, Jan. 25, 2001.

similar agencies in Norway. Such experience also supports the Applicants' contention that TSMS is qualified to operate the CMC business in the public interest. The Applicants will not object if the Commission conditions its approval of the proposed acquisition on compliance with any agreement reached between Telenor and the executive branch agencies.

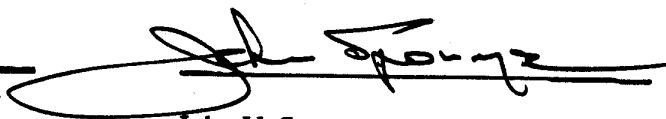
CONCLUSION

For the reasons set forth above, the proposed acquisition of the CMC business by TSMS, and the assignment to Telenor Satellite of the COMSAT licenses and authorizations listed in Attachment 1, would be in the public interest and fully consistent with Section 310. COMSAT, TSMS and Telenor Satellite accordingly request that the Commission grant these assignments and the requested declaratory ruling.

Respectfully submitted,



Britz Carina Ivarson Horncastle
Sole Director
Telenor Satellite Mobile Services, Inc.
and Telenor Satellite, Inc.
9 East Lookerman Street
Dover, Delaware 19901

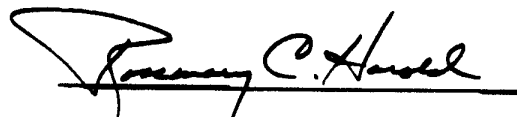


John V. Sponyoe
President and Chief Executive Officer
Lockheed Martin Global
Telecommunications and
COMSAT Corporation
6560 Rock Spring Drive
Bethesda, Maryland 20817
(301) 214-3461



George Kleinfeld
Scott B. Murray
Damon A. Terrill
CLIFFORD CHANCE ROGERS & WELLS
2001 K Street, N.W.
Washington, D.C. 20006
(202) 912-5000

*Counsel for Telenor Satellite Mobile Services Inc.
and Telenor Satellite Inc.*



Lawrence W. Secrest, III
Rosemary C. Harold
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

*Counsel for Lockheed Martin Global
Telecommunications and COMSAT
Corporation*

WA 293612.1

May 4, 2001