

**C L I F F O R D
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July 10, 2001

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
TW -A325
Washington, D.C. 20554

2001 JUL 11 P 12:44

Re: File No. SES-ASG-20010504-00896
Opposition to Petition to Deny

Dear Ms. Salas:

On behalf of Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc. ("Telenor") and COMSAT Corporation and COMSAT General Corporation ("COMSAT"), please find enclosed herewith an original and four copies of their Opposition to the Petition to Deny and Petition for Protective Orders filed by Litigation Recovery Trust.

With the attached Certificate of Service, the parties certify that all parties entitled to receive a copy of the enclosed pleading have been so served.

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

Ms. Magalie Roman Salas
July 10, 2001

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

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

File No. SES-ASG-20010504-00896

OPPOSITION TO PETITION TO DENY

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File No. SES-ASG-20010504-00896

OPPOSITION TO PETITION TO DENY

Telenor Satellite Mobile Services, Inc. (“TSMS”), Telenor Satellite, Inc., and their Norwegian indirect sole owner and guarantor, Telenor Broadband Services AS (individually or collectively “Telenor”), together with Lockheed Martin Global Telecommunications (“LMGT”), COMSAT Corporation, and COMSAT General Corporation (collectively “COMSAT”), by counsel and pursuant to Section 25.154 of the Commission’s Rules, hereby submit their Opposition to the Petition to Deny and Petition for Protective Orders (the “Petition”) filed by Litigation Recovery Trust (“LRT” or “Petitioner”). LRT submitted its Petition, purportedly on a “provisional” basis, in response to the Applications (the “Application”) that COMSAT and

Telenor filed jointly in connection with the proposed acquisition by TSMS of the COMSAT business unit known as COMSAT Mobile Communications (“CMC”).

INTRODUCTION and SUMMARY

COMSAT and Telenor (the “Applicants”) respectfully submit that LRT’s Petition does not provide any factual or legal justification for an adverse finding by the Commission with respect to the Application or Applicants’ request for a declaratory ruling that the proposed assignments would be consistent with the public interest. Moreover, LRT’s objections regarding Telenor’s corporate structure, the proposed transaction’s effect on competition, law enforcement and national security safeguards, and the applicability of the ORBIT Act are all without merit.

As an initial matter, the Applicants note that the Commission requires all comments, petitions, and informal objections to comply with 47 C.F.R. § 25.154.¹ Those Rules stipulate that petitions must “[c]ontain specific allegations of fact . . . to support the specific relief requested” and sufficient to demonstrate that granting the Application “would be prima facie inconsistent with the public interest.”² LRT plainly has not satisfied this standard.³ Nonetheless, and for the Commission’s convenience, the Applicants address briefly the apparent thrust of Petitioner’s comments.

I. Telenor’s Corporate Structure

In the course of summarizing the information provided in the Application regarding Telenor’s corporate structure and ownership, LRT does not allege that the proposed indirect

¹ See e.g., Public Notice of the Application, Report No. SPB-169 (May 25, 2001).

² 47 C.F.R. § 25.154(a)(4).

³ LRT has demonstrated no need for the requested protective orders nor alleged any specific facts that could justify denial of the Application.

ownership of CMC by Telenor Broadband Services AS would contravene U.S. law, the Commission's Rules, or applicable precedent.⁴ Indeed, LRT acknowledges that the Commission's legal analysis in its recent *VoiceStream / Deutsche Telekom Order*⁵ is applicable to the proposed transaction. Specifically, LRT correctly observes that in the *VoiceStream Order*, the Commission held that transactions involving the types of indirect foreign ownership of U.S. telecommunications licenses proposed in the Application are governed "only" by Section 310(b)(4) of the 1934 Communications Act, as amended.⁶ It is of course pursuant to Section 310(b)(4) and in light of Telenor's foreign ownership that the Applicants have requested a declaratory ruling from the Commission that the proposed transaction between COMSAT and Telenor would serve the public interest.

As noted by LRT, under Section 310(b)(4) the Commission considers a proposed transaction's effect on competition in the relevant U.S. telecommunications market, as well as other public interest criteria such as national security, law enforcement, and public safety issues relevant to a given application.⁷ But LRT fails to dispute the Applicants' demonstration that

⁴ See Petition at 8.

⁵ *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 (rel. April 27, 2001) ("*VoiceStream Order*").

⁶ See Petition at 7, citing to the *VoiceStream Order* at ¶ 33.

⁷ See Petition at 8; see also *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd. 23891 at ¶¶ 61, 65 & 113 (1997) ("*Foreign Participation Order*").

Telenor's U.S. subsidiaries are legally qualified to hold the CMC licenses and that the proposed transaction would serve the public interest under Section 310(b)(4).⁸

As a separate matter, the Applicants hereby report that, subsequent to their filing of the Application, the Norwegian parliament has authorized a further reduction in Norway's ownership share in Telenor ASA (the proposed assignee's ultimate corporate parent) to a minority stake of as little as 34%.⁹ The parliament's decision has the effect of permitting majority ownership in Telenor ASA to pass from the Kingdom of Norway to the shareholding public for the first time.

II. Effect on Competition

Insofar as any of LRT's observations regarding Telenor's ownership are relevant to the Application, they seem directed primarily at issues surrounding the proposed transaction's effect on competition. For example, LRT hints vaguely of concern that a grant of the Application might have a negative effect on competitive conditions in the U.S. marketplace for mobile satellite telecommunications services.¹⁰ As a general matter, the Commission should consider LRT's comments in light of the established presumption that acquisitions of FCC-licensed common carriers by U.S. subsidiaries of firms based in WTO member countries—such as Norway—will promote effective competition.¹¹

⁸ Furthermore, LRT does not dispute that the Commission explicitly determined it should "treat[] foreign individuals, corporations, and governments in the same manner" and declined to impose "a limitation on indirect corporate control by foreign governments that does not apply to indirect control by aliens." See *VoiceStream Order* at ¶¶ 45-46.

⁹ The parliament's action took place on June 15, 2001; a date for the corresponding sale or dilution of shares held by Norway's government has not yet been announced.

¹⁰ See Petition at 8-9.

¹¹ See Foreign Participation Order at ¶¶ 4-11 & 98. See also Petition at 8 and n.23, in which LRT acknowledges the presumption of competitive benefits from such investments announced in
(Continued...)

The Applicants also note that the Department of Justice and Federal Trade Commission have elected not to request additional information from the Applicants following their notification of the proposed transaction pursuant to the Hart-Scott-Rodino Antitrust Improvement Act. This Hart-Scott clearance comports with the Applicants' demonstration that the proposed transaction would cause no harm to competition in the relevant marketplace.

LRT offers no economic or market analysis to rebut the favorable application of the Commission's presumption in favor of market entry to the proposed transaction. Furthermore, to the extent that LRT does introduce its own characterization of the mobile satellite services marketplace, it overlooks the most significant facts described in the Application.

A. Present Competitiveness of Mobile Satellite Services

LRT speculates that the overall competitiveness of the U.S. marketplace for mobile satellite services could decrease at some point in the future, given the current financial difficulties faced by certain participants.¹² But Petitioner completely fails to comprehend the basic characteristics of the intra- and inter-system facilities-based competition that drive this industry—and the relative positions therein of Telenor and COMSAT. For example, utterly missing from LRT's submission is any mention of two of the most prominent competitors for customers seeking Inmarsat services, Stratos Global Corporation and Xantic. These substantial competitor firms, along with other major Inmarsat Land Earth Station Operators, offer mobile satellite communications services with global coverage—a development to which the proposed

(...Continued)
the Foreign Participation Order.

¹² See Petition at 11. Nevertheless, LRT also notes that new companies (Teledesic and Spaceway) are preparing now to enter the satellite communications marketplace.

transaction in part responds.¹³ Far from reducing the number of competitors in the relevant marketplace, the proposed transaction is necessary to satisfy consumer demand for such capabilities.¹⁴ Apart from intense competition among Inmarsat service providers, LRT also overlooks the current efforts of alternative global mobile satellite systems, such as Iridium and Globalstar, that are pursuing much the same customer base.¹⁵ Finally, Petitioner does not account for the significant role played by regional satellite system and maritime radio service providers.¹⁶

Simply put, LRT has done nothing to refute record evidence showing the intensely competitive nature of the current marketplace, including the absence of any substantial barriers to entry by resellers or other alternative providers of mobile satellite communications.¹⁷ Rather, LRT seeks only to arouse nebulous and misplaced anxieties about Telenor's commercial orientation and market behavior.

¹³ See Application by Lockheed Martin Global Telecommunications, COMSAT Corporation, and COMSAT General Corporation (Assignor) and Telenor Satellite Mobile Services Inc., and Telenor Satellite Inc. (Assignee) for Approval of Assignments and Petition for Declaratory Ruling, filed May 4, 2001 (the "Application Narrative") at 31-32.

¹⁴ See e.g., Letters from Satcom Direct, Inc. (June 8, 2001), American Seafoods Company (June 13, 2001), and Continental Airlines (June 19, 2001) filed in this proceeding.

¹⁵ See, for example, the recent interview with "New" Iridium's Chief Executive Officer, Gino Picaso, regarding the company's recent successes and ambitious future plans. *Fire Sale Price Sets Up "New" Iridium for Success*, TELECOMM. REP. INT'L, June 15, 2001, at 7-12; see also Application by Iridium U.S., L.P (Assignor) and Iridium Satellite LLC (Assignee) for Consent to Assignment of Transmit-Receive Earth Station License E960131, filed March 19, 2001, Exhibit C.

¹⁶ See Application Narrative at 31-32.

¹⁷ See Application Narrative at 3-4, 30-32.

B. Telenor's Participation in the Marketplace

LRT speculates that Norway's ownership interest in Telenor ASA might afford Telenor anti-competitive advantages "within the world telecommunications industry."¹⁸ But Petitioner offers no factual support whatsoever for its assertions.

The Application described in detail the legal and structural mechanisms that ensure Telenor's competitive discipline, commercial orientation, and full exposure to market forces.¹⁹ LRT neither addresses these safeguards nor provides any other basis for questioning the effectiveness of the strict separation between the Norwegian government and Telenor's management. In this context, the protective orders and requests for additional information proposed by LRT are factually unsupported, legally unsound, and completely unnecessary.

Finally, much of LRT's conjecture is misplaced even on its own terms, given its focus on foreign and global market conditions. The Commission has emphasized repeatedly that its inquiry into the competitive effects of proposed transactions is necessarily limited to the United States and the marketplace for international services between the U.S. and a foreign carrier's home market.²⁰ With respect to the latter, Telenor has already indicated that it will submit to regulation as a dominant carrier.²¹

¹⁸ See Petition at 12.

¹⁹ See Application Narrative at 6-15.

²⁰ See e.g., *VoiceStream Order* at n.283 and accompanying text; see also *Applications for Transfer of Control of Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Government Systems*, 15 FCC Rcd 22910 (2000) at ¶ 17, citing *Application of WorldCom, Inc., and MCI Communications Corporation for Transfer of Control of MCI to WorldCom*, 13 FCC Rcd 18025, 18039, 18070 (1998).

²¹ See Application by Lockheed Martin Global Telecommunications, COMSAT Corporation, and COMSAT General Corporation (Assignor) and Telenor Satellite Mobile
(Continued...)

III. National Security and Law Enforcement Considerations

LRT observes that the Commission's evaluation of the proposed assignments will necessarily include national security and law enforcement considerations. For this reason, the Applicants have already entered into consultations with the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") to address U.S. network security and law enforcement requirements. On June 21, 2001, the Applicants filed with the Commission a Petition to Defer, requesting jointly with the DOJ and FBI that the Commission defer any grant of approval pending an agreement to resolve those aspects of the Application that might give rise to national security, law enforcement, or public safety concerns.

In addition, the Applicants recognize the potential applicability of other notification and review mechanisms that would enable the appropriate executive branch agencies to evaluate the national security implications of the transaction as a whole. LRT has offered no evidence, precedent, or reasoning that could justify its proposed creation by the Commission of a "task force" to duplicate the work of those agencies.

IV. The Proposed Transaction Does Not Implicate the ORBIT Act

Petitioner's arguments concerning the relevance of the ORBIT Act to the contemplated sale of CMC are simply erroneous. The Commission should reject Petitioner's attempt to inject ORBIT Act issues into this proceeding.

The proposed transaction does not violate any provision of the statute, including the only one that the Petition specifically cites: Section 621(2), the "Independence" provision

(...Continued)

Services Inc., and Telenor Satellite Inc. (Assignee) for Assignment of Section 214 Authorizations and Grant of Global Facilities-Based and Resale Authority, filed May 4, 2001, at 8 .

incorporated within the general “Pro-Competitive Privatization” requirements of the ORBIT Act. That provision prescribes “an initial public offering” as the means for the privatized Inmarsat (duly incorporated in the United Kingdom in April 1999 and now known as Inmarsat Ventures, Plc.) to “achieve” the requisite independence from former Inmarsat signatories. Yet Petitioner concedes that as the Inmarsat IPO occurs,²² the ownership shares of former signatories will be diluted consistent with the statute’s provision.²³

LRT points to no statutory provision that would bar former signatories from acquiring lines of business from one another—which is the issue in this proceeding—either before or after the IPO. Moreover, because this proposed transaction involves no sale of an investment interest in Inmarsat Ventures, it therefore would have no effect whatsoever on the ownership interests held by former Inmarsat signatories.

Lacking any direct statutory foundation for its argument, Petitioner attempts to recast the legislative history of the ORBIT Act to fit its purposes. But Congress designed the Act to afford COMSAT full and normal scope to exercise its business judgment—as the floor statement from Chairman Tauzin quoted by the Petition plainly shows. Chairman Tauzin stated that the legislation “unshackles COMSAT from the antiquated regulatory burdens that have to date hampered its success” by preventing it from “swiftly tak[ing] advantage of new market

²² The Act gives the FCC discretion to afford Inmarsat Ventures up to December 31, 2001, to conduct its IPO, and the Commission recently approved Inmarsat’s request to extend its IPO deadline until that date. *See In re Inmarsat Ventures, Ltd.*, File Nos. SAT-MS-C-20000808-00119 and SAT-MS-C-20010405-00029 (rel. June 29, 2001) (finding that company has been diligent in preparing for its IPO and that extension of time is reasonable because of current market conditions facing IPOs generally).

²³ Petition at 23.

opportunities.”²⁴ In effectuating that intent, Congress used the ORBIT Act to lift the ownership restrictions imposed on COMSAT common stock, as well as removing a host of other restrictions and obligations. The law certainly did not impose any *new* ownership restrictions or obligations on COMSAT, its specific lines of business, or on any of its current or future shareholders, as LRT suggests. Rather, the intent of Congress was to allow COMSAT to function like any other privately held corporation, whose unfettered presence in the marketplace would strengthen competition and thereby benefit U.S. consumers.

That intent is fully served by the proposed transaction. The Applicants anticipate that the sale of the CMC line of business to Telenor will enhance and expand the Inmarsat-based mobile offerings available to U.S. consumers. Telenor has consistently played a significant role in the introduction of new and innovative Inmarsat services in international markets, achieving a superior record for quality and reliability. The Applicants expect that integrating their facilities would provide U.S. customers with improved services, features, and applications in locations across the globe.²⁵

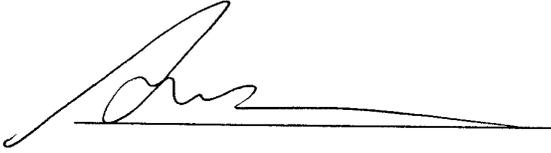
CONCLUSION

For the reasons set forth above, the Applicants oppose LRT’s Petition. As a threshold matter, because LRT has failed to allege specific facts that would justify the denial of the Application or the other relief it seeks, Petitioners have not met their pleading burden under the Commission’s Rules. To the degree the Petition does contain substantive objections, none are supported by facts or argumentation sufficient to rebut the record evidence in favor of the

²⁴ Petition at 19 (citing 146 Cong. Rec. H905 (daily ed. Mar. 9, 2000) (Statement of Rep. Tauzin)).

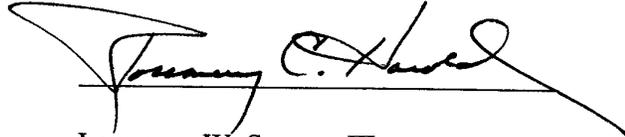
proposed transaction submitted by the Applicants. Accordingly, the Commission should deny LRT's Petition.

Respectfully submitted,



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July 10, 2001

²⁵ (...Continued)
See Application Narrative at 24-33.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Opposition was served on this date via Federal Express or U.S. mail, postage prepaid, to:

Mr. William L. Whitely
Trustee
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George Kleinfeld
July 10, 2001