

9/21/02 WPR

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D.C. 20554

RECEIVED & INSPECTED  
AUG 02 2002  
FCC-MAILROOM

Received

AUG 15 2002

In the Matter of	)	File No.39-SAT-P/LA-98;Call Sign S2332
	)	IBFS File No.SAT-LOA-1997122-0208
	)	File No.40-SAT-P/LA-98;Call Sign S2333
Lockheed Martin Corporation	)	IBFS File No.SAT-LOA-1997122-0206
	)	File No.41-SAT-P/LA-98;Call Sign S2334
	)	IBFS File No.SAT-LOA-1997122-0212
Authority to Construct, Launch,	)	File No.42-SAT-P/LA-98; Call Sign S2335
and Operate a Ka-Band Satellite	)	IBFS File No.SAT-LOA-1997122-0211
System in the Fixed-Satellite Service)	)	File No. 43-SAT-P/LA-98; Call Sign S2336
	)	IBFS File No.SAT-LOA-1997122-0213

**MOTION FOR CORRECTION, CLARIFICATION AND RETRACTION**

Litigation Recovery Trust ("Petitioner" or "LRT"), on behalf of its members and its associated entities<sup>1</sup>, hereby submits the instant MOTION FOR CORRECTION, CLARIFICATION AND RETRACTION . On July 5, 2002, the Commission issued an Order on Reconsideration ("Order") in response to a Petition for Reconsideration ("LRT Petition") filed by LRT in the above-captioned proceeding in which the Commission, as an initial matter, has authorized the grant of the applications of Lockheed Martin Corporation ("Lockheed") to launch and operate a satellite system in geostationary-satellite orbit to provide fixed-satellite services in the Ka-band.<sup>2</sup> In a separate order, the International Bureau assigned Lockheed Martin's satellites to the 129° W.L., 51° E.L.,

<sup>1</sup> Litigation Recovery Trust represents the rights and claims of certain individuals, and includes the following entities: Committee to Restructure the International Satellite Organizations ("CRISO") and Digital Conversion Organization("DCO"). The instant filing is part of LRT's continuing corporate performance and governance monitoring and assessment program.

<sup>2</sup> In the Matter of Lockheed Martin Corporation, *Order and Authorization*, DA 01-1688, File No. 39-SAT-P/LA-98 *et al.* (Int'l Bur. rel. August 3, 2001) (*Lockheed Martin Ka-band Authorization*).

99° E.L., and 151.5° E.L. orbital locations.<sup>3</sup> Lockheed Martin opposed the LRT Petition for Reconsideration.

The Commission stated that LRT's Petition also raised issues that it has sought to address in a set of companion orders<sup>4</sup> involving Lockheed and its subsidiary, Comsat Corporation ("Comsat"). The Commission acted on LRT's Petition in this proceeding as part of that set of rulings.

### 1. Summary

LRT views the Order and companion rulings as having been designed, intentionally or unintentionally, to overlook, disregard and in some instances erroneously dismiss evidence of illegality on the part of Lockheed and Comsat. LRT regards the illegal actions of Lockheed as more serious than the litany of the recently discovered offenses of corporate wrongdoers. What makes the illegal and unethical conduct of Lockheed so much worse is the fact that Lockheed is the country's largest defense contractor and, as such, is expected to conduct its business dealings in an exemplary fashion, in accordance with the highest ethical and legal standards. As reflected in the Order, LRT's prior submissions herein and this Motion, Lockheed, either directly or indirectly, through its subsidiaries, including Comsat, has repeatedly violated these ethical standards and federal laws and Commission rules and regulations, and accordingly should be severely sanctioned.

For nearly two years, LRT has sought the intervention of the Commission to sanction illegal conduct on the part of Lockheed. Unfortunately, as outlined below, the Commission in its Order has overlooked; disregarded or erroneously dismissed evidence of legal violations by Lockheed. Furthermore, the Order contains a number of material

---

<sup>3</sup> In the Matter of Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-Band, *Order*, DA 01-1693 (Int'l Bur. rel. August 3, 2001) (*Second Round GSO Assignment Order*).

<sup>4</sup> See *In re Comsat-Lockheed Merger Proceeding*, Order on Reconsideration, FCC Release 02-197, July 5, 2002. ("Comsat Merger Order"); *In re Comsat Corporation Applications to Provide Inmarsat Service* (FCC Release 02-200); *In re Litigation Recovery Trust, Petition for Declaratory Ruling* (FCC Release 02-199)

errors, misstatements and omissions of vital evidence . This Motion is intended to correct these serious errors and omissions.

In addition, the Order at ¶ 8 includes an unsupported and improper admonition, accusing LRT of misuse of Commission process. This censure is included in the Order, notwithstanding the fact that, as confirmed in the Merger Order proceeding, it is LRT's independent research that has found Comsat/Lockheed guilty of filing false information with the Commission. Furthermore, as demonstrated herein and in prior pleadings in this proceeding, Lockheed has systematically and repeatedly failed to comply with the Commission's disclosure requirements, in violation of 47 CFR § 1.65. The Commission's action in adopting the admonition infringes the Constitutional rights of free speech, petition and due process of LRT members. LRT petitions for the immediate retraction of the ¶ 8 admonition. Further, LRT should be commended for its continuing investigations and research dedicated to public interest objectives concerning statutory and regulatory violations by licensees, including Lockheed and Comsat.

## 2. Request for Corrections and/or Clarifications

This pleading seeks the adoption of necessary and appropriate corrections and clarifications so that the reissued, corrected Order can be submitted by LRT for proper review by the U.S. Court of Appeals. Consequently, expedited action on this Motion is respectfully requested.

### A. Order Erroneously Finds the LRT Petition to be Procedurally Defective

The Commission states at ¶ 6 of the Order that "LRT fails to show how its interests have been adversely affected by "the International Bureau's authorization of Lockheed Martin's Ka-band application." Order, ¶ 6. The Commission also observes as follows:

LRT does not show it is either a customer of Lockheed Martin or Comsat or a potential competitor in the provision of communications services. Nor does LRT show that it is a public interest representative acting beyond the interests of its

members and their ongoing dispute with Comsat arising from the operation of BelCom<sup>5</sup>.

The Commission's conclusions are erroneous and directly contradict the specific positions taken by LRT in its Petition and Reply to Opposition submitted herein.

As was made abundantly clear in its filings in this proceeding<sup>6</sup>, LRT is in fact functioning "as a public representative acting beyond the interest of its members." Specifically, from the outset, LRT has been acting on behalf of all parties with a direct or indirect interest in the Commission's authorization of new Ka Band satellite systems to Lockheed. This group of interested parties includes competing applicants, carriers, vendors, customers with an interest in the satellite facilities available for licensing to Lockheed in this proceeding.

LRT made its expanded interest quite explicit in its pleadings, a fact which has been erroneously overlooked or disregarded by the Commission in its Order.

In its Petition, LRT outlined in detail the repeated and continuing failures of Lockheed to comply with the Commission's disclosure requirements<sup>7</sup>. LRT noted that Lockheed had failed to properly amend its applications to reference facts and information derived from various other proceedings in which it and Comsat were involved. These other proceedings are addressed in detail below.

In its Opposition, Lockheed, rather than addressing LRT's substantive allegations, sought to make light of the litany of deliberate failures of the company to comply with the Commission's disclosure regulations by stating:

"But even if that were not the case, any suggestions that Lockheed Martin was intentionally withholding information from the FCC is absurd given the fact that the same Bureau was acting on both applications." Lockheed Opposition.

---

<sup>5</sup> BelCom, Inc, was a company founded and operated by LRT members and which was acquired by Comsat in May 1993 and subsequently closed by Lockheed in December 2001.

<sup>6</sup> See LRT Petition for Reconsideration; LRT Reply to Opposition to Petition for Reconsideration

<sup>7</sup> See 47 CFR § 1.65

This statement fails to address the key matter at issue, the rules assure disclosure to all interested parties—not just the Commission.

The purpose of the Commission's disclosure requirements set forth in Section 1.65 Rules (47 CFR §1.65) is to inform the Commission, the public, and concerned parties of material changes in the application.<sup>8</sup> LRT's expressed interest in participating in this proceeding has been in assuring that the "public and all concerned parties," i.e. all parties participating in the Ka Band license proceeding, and all parties interested in the outcome, be provided adequate notice of the character qualifications (or lack thereof) of Lockheed<sup>9</sup>. The failure of Lockheed to comply with the disclosure rules of the Commission directly affected all such parties.

As all parties and legal practitioners participating in Commission proceedings fully recognize, the Section 1.65 disclosure requirements have been established by the Commission to assure that applicants provide all relevant and current information for review by the Commission staff and the other parties participating in individual proceedings. In its Opposition, Lockheed deliberately chose to overlook the fact that the company's failure to properly amend its applications with updated information affected those other parties participating in the subject proceeding. The Commission failed to address this blatant error on the part of Lockheed.

The Lockheed Ka-band Applications were contested by other parties. Specifically, three applicants in second-round Ka-band proceeding filed petitions to deny the Second-Round Lockheed application.<sup>10</sup> The failure of Lockheed to amend its applications to include information directly related to its character qualifications

---

<sup>8</sup> See *Pinelands, Inc. and BHC Communications, Inc.*, 7 FCC Rcd 6058, 6064 n. 25 (1992); *WPIX, Inc.*, 33 FCC 2d 782, 783-84 (1972).

<sup>9</sup> See LRT Reply to Opposition to Petition For Reconsideration, pp 4-5

<sup>10</sup> Pacific Century Group, Inc., Petition To Deny Or Condition Grant Of Authorizations, filed May 21, 1999 ("PCG Petition"); Pegasus Development Corporation, Consolidated Petition to Deny, filed May 21, 1999 ("Pegasus Consolidated Petition"); Consolidated Petitions To Dismiss, Deny or defer Of Hughes Communications Galaxy, Inc. and Hughes Communications, Inc., filed May 21, 1999 ("Hughes Consolidated Petition"). We address all issues relating to the assignment of orbit locations, financial qualifications, and two-degree spacing in the *Second Round GSO Assignment Order* released today.

foreclosed any reasonable opportunity, which the contesting parties might have had to raise additional objections concerning Lockheed's unfitness to receive the subject license grants<sup>11</sup>.

In the final analysis, it must be recognized that the rules are the rules, even for large and powerful companies such as Lockheed. Disclosure of all material matters affecting licensee character qualifications is critical to the proper review and evaluation of applications by the Commission and other interested parties. Intentional and repeated failures to comply with these regulations cannot be explained away in an arrogant flourish by Lockheed lawyers as "absurd" objections.<sup>12</sup>

The failure of the Commission to properly recognize LRT's clearly announced intent and purpose in participating in this proceeding constitutes error on the part of the agency.

LRT requests that the Order be corrected to reflect the fact that LRT was in fact functioning as a public interest representative, acting beyond the interests of its members, in taking part in the subject proceeding. The finding that the LRT Petition was procedurally defective should be deleted.

B. The Order Fails to Cite Lockheed's Failure to Amend its Applications to Reference an Ongoing Criminal Proceeding Involving Its Subsidiary

In the Order, the Commission references a companion order it adopted denying LRT's Petition for Reconsideration of the Commission's authorization of Lockheed

---

<sup>11</sup> At the time LRT filed its Petition herein, it was participating in another proceeding before the International Bureau involving Comsat's attempted assignment of certain mobile satellite communications licenses to Telenor, SA. In that proceeding, outside counsel for Comsat served LRT with amendments, updating the subject applications. It is noted that the attorneys representing Comsat in the Telenor proceeding were different from those participating in the Ka-band proceeding. Comsat's actions in the Telenor proceeding complied with the Commission's rules. Lockheed's actions in the KA-band proceeding failed to meet these required standards.

<sup>12</sup> In fact, the above-referenced comment of Lockheed reflects either a total misunderstanding of the Commission's licensing procedures or a cavalier disregard and disrespect for the process itself. In either case, such conduct is unacceptable and representative of the conduct of Lockheed and Comsat involving their continued fundamental failure to comply with the Commission's rules, regulations and policies.

acquisition of Comsat. In the Merger Order<sup>13</sup>, the Commission addressed and rejected LRT's allegations that Comsat is not a qualified Commission licensee because of the "EMS matter," which involved Comsat/Lockheed's filing of false information and the failure to disclose other information concerning certain criminal and civil law matters brought against Comsat's Florida subsidiary, Electromechanical Systems, Inc. ("EMS").

In the Order, the Commission found that Comsat complied with disclosure rules in notifying the Commission of the EMS matter, noting further: .

LRT does not, in this proceeding, provide any new factual information that would persuade us to reach a different decision on the content of this proceeding. Moreover, the circumstances surrounding the EMS matter were a matter of public record and known to the Commission when the International Bureau granted the Lockheed Martin Ka-band application. The International Bureau's action came over a year after Comsat informed the Commission of the plea agreement on the EMS case, and Lockheed Martin otherwise properly reported its acquisition of Comsat in this proceeding. Order ¶7, emphasis added.

The Commission's ruling is in error as it directly violates 47 CFR § 1.65. Under Section 1.65(a), applicants must disclose inaccuracies in pending applications "as promptly as possible and in any event within 30 days" whenever: (1) information furnished in the pending application "is no longer substantially accurate or complete in all significant respects"; or (2) "there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application."<sup>14</sup> Recently, in addressing the compliance requirements under Section 1.65, the Commission has observed that

Section 1.65 imposes an affirmative obligation on regulated entities to inform the Commission of the facts needed to fulfill its duties. Our decisions rely heavily on the completeness and accuracy of applicants' submissions because we do not have the resources to verify independently each and every representation made in the thousands of pages submitted to us each day. *In re AT&T Wireless Services, Inc.*, File No. EB-02-TS-018 Washington, DC NAL/Acct. No. 200232100002 FRN 0006-1660-29, NOTICE OF APPARENT LIABILITY FOR FORFEITURE Released: May 20, 2002.

---

<sup>13</sup> In re Lockheed Martin Corporation and Comsat Corporation Applications for Transfer of Control, *Order and Authorization*, File Nos. SAT-T/C-20000323-00078 *et al.*, FCC 00-277, 15 FCC Rcd 22,910, *Erratum*, 15 FCC Rcd 23,506 (2000) (*Phase II Order*).

<sup>14</sup> 47 C.F.R. § 1.65(a).

In the instant case, LRT ascertained that Lockheed had set about a pattern of conduct designed to conceal information concerning the criminal plea agreement of Comsat's Florida subsidiary. Specifically, on July 17, 2000, just days prior to the Commission's approval of the Comsat-Lockheed Merger ("Merger"), Comsat's Florida subsidiary, EMS executed a plea agreement with the U.S. Department of Justice, in which it admitted to defrauding the U.S. Navy and obstructing justice.<sup>15</sup> Further, EMS agreed to accept a five year sentence of probation and remit to the US Government \$7.5 million in restitution. The company was also fined.

LRT brought this serious matter to the attention of the Commission in its Petition for Reconsideration of the Comsat Merger Order. LRT referenced both this criminal plea agreement and a companion Federal False Claim Action<sup>16</sup> brought by the Justice Department against Comsat.

In filing its Petition in this proceeding, LRT noted that Lockheed had failed to file an amendment to its series of pending applications in order to provide proper notice of the criminal conviction. Furthermore, while not referenced in LRT's prior pleadings herein, it is obvious that Lockheed violated not only the disclosure requirements under 47 CFR § 1.65, but also failed to update its Form 312 Satellite Space Station Applications in accordance with processing policies.<sup>17</sup>

EMS was made the subject of a federal grand jury investigation beginning in January 1999 and executed the plea agreement with the Justice Department on July 17, 2000. Lockheed merged with Comsat on August 3, 2000. It then had 30 days to amend its Form 312 Applications and file a proper notice for the purpose of complying

---

<sup>15</sup> See Plea Agreement of EMS entered in *USA v. Electromechanical Systems, Inc.*, Criminal No. 8:00-CR-00253 in the US District Court, Middle District of Florida (Tampa Division) ("*US v. EMS*"). See also, Order ¶ 8.

<sup>16</sup> *United States ex rel. Beattie et al v. Comsat Corporation et al* Case No. (1996CV00966) ("*USA v Comsat*").

<sup>17</sup> The reporting requirement under FCC Form 312 is as follows:

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



with Rule 1.65 to provide information concerning its acquisition of Comsat and the EMS criminal plea matter.

Based on the information set forth in the Order, it appears that, to this day, Lockheed has not properly amended its Ka Band applications<sup>18</sup>. The participants in this proceeding have never been notified that (1) Lockheed acquired Comsat, and in so doing, took control of a company that days prior to its merger with Comsat executed a criminal plea agreement and (2) Lockheed subsequently failed to comply with the requirements of Section 1.65 by filing a timely amendment concerning the criminal plea.<sup>19</sup>

The purpose of section 1.65 is to inform the Commission, the public, and concerned parties of material changes in pending applications.<sup>20</sup> Moreover, section 1.65 imposes an affirmative obligation on regulated entities to inform the Commission of the facts needed to fulfill its duties. As one court has stated, "[t]he Commission is not expected to play procedural games with those who come before it in order to ascertain the truth."<sup>21</sup>

The Order should be corrected to reference Lockheed's repeated violations of 47 USC § 1.65 in not properly submitting updated information in its pending applications concerning its acquisition of Comsat and the EMS criminal proceedings and plea agreement.

---

<sup>18</sup> Section 1.65 requires applicants to notify the Commission of substantial changes "as promptly as possible and in any event within 30 days." The 30-day time limit is the maximum amount of time that an applicant is allowed before it must file its notification, absent "good cause." 47 C.F.R. § 1.65(a).

<sup>19</sup> The EMS criminal plea agreement was executed on July 17, 2000. A timely Section 1.65 notice would have had to be filed by August 16, 2000. No such filing was made. Furthermore, it appears that none of Lockheed's Form 312 applications have ever been amended to include current information. (Form 312, question 39; Instructions, p. 2, Current Information.)

<sup>20</sup> See *Pinelands, Inc. and BHC Communications, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6058, 6064 n.25 (1992); *WPIX, Inc.*, Memorandum Opinion and Order, 33 FCC 2d 782, 783-84, para. 3 (1972).

<sup>21</sup> *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981) (internal citations omitted).

C. The Order Erroneously References a "Public Record"  
Exception to 47 CFR § 1.65

The Commission explains away Lockheed's failure to amend its applications by observing that "the circumstances surrounding the EMS matter were a matter of public record." This finding of the Commission is clearly in error.

After extensive research, LRT has found that reports concerning the execution of the EMS plea agreement were carried in three newspapers in the United States<sup>22</sup>. And of the three reports, the one in the *Washington Post* failed to report the full facts.<sup>23</sup> Comsat also included a concealed reference to the EMS matter in filing its last 10 Q Report with the U.S. Securities and Exchange Commission.<sup>24</sup> Therefore, in reality, there was no "public record" of the EMS matter as that term is generally accepted.

However, the paucity of press and other reports notwithstanding, Section 1.65 does not include a "public record" exception in any event. For the Commission to include such a reference is in error.

The disclosure rules are intended to assure that applicants properly update their filings to make certain that all information contained is both accurate and current for the proper review and assessment by the Commission and all other interested parties. For

---

<sup>22</sup> The *Tampa Tribune*, St. Petersburg (Fla) *Times* and *Washington Post*. See LRT Petition for Reconsideration of Comsat Merger Order, pp. 8-10.

<sup>23</sup> The *Washington Post* reported the EMS matter without referencing the criminality of the conduct as follows:

Comsat ..... said the earnings were affected by a \$7.5 million reserve related to an investigation of Comsat's Electromechanical Systems Inc. by the U.S. Attorney's Office in Tampa. Last week, Electromechanical System pleaded guilty to overcharging the government for work on a contract to refurbish U.S. Navy radar pedestals n ship. The company agreed to pay the government \$7.5 million. *Washington Post*, July 25, 2000, p.E04, emphasis added.

<sup>24</sup> Comsat in its last 10Q Report of quarterly earnings filed with the US Securities and Exchange Commission, Comsat included the following statement: "The results for the second quarter and first six months of 2000 included the establishment of a \$7.5 million reserve related to an investigation by the U.S. Attorney's Office in Tampa of Electromechanical Systems, Inc., a subsidiary located in Largo, Florida. " Clearly, no reference to the criminal plea was included in the financial summary. This notice could have been interpreted that the Comsat subsidiary was the victim of the fraud, not the perpetrator. See <http://www.secinfo.com/dSAKe.5266.htm>

the Commission to cite a “public record” exception to Rule 1.65 is an error and would deny interested parties equal access to accurate and timely information.

The Order should be amended to correct the Commission’s erroneous reference to the public record exception to Rule 1.65.

D. Order Includes Erroneous References to Disclosure Notices  
Filed by Lockheed in this Proceeding

The Order references the fact that Comsat “informed the Commission of the plea agreement on (sic) the EMS case, and Lockheed Martin otherwise properly reported the acquisition of Comsat in this proceeding.”

This statement is also erroneous.

The Comsat disclosure statement in the form of a letter came more than 30 days following the execution of the EMS criminal plea agreement and was executed by a company attorney. The said letter “amendment” was not timely filed and was not signed by an officer as required by the Rules.<sup>25</sup> In addition, the filing of the attorney’s letter in the Lockheed-Comsat Merger Proceeding would have no legal effect and would be a nullity in the instant proceeding. To be effective, a separate, properly executed amendment would have to be submitted for each application pending in this proceeding.<sup>26</sup> The Commission’s reference to properly or improperly filed amendment documents in another proceeding is in error.

---

<sup>25</sup> It is noted that under the Commission’s rules (Part 1) and the filing and certification instructions to Form 312, in the case of corporations, amendments to FCC applications are required to be signed by officers. Attorneys can file only where officers are absent and unavailable to execute the amendment. Based on the information included in the Commission’s Order, it appears that attorney Bender’s letter did not constitute a properly filed amendment. This would constitute separate grounds for rejecting Comsat’s proffered filing. This would also constitute an additional rule violation by the companies.

<sup>26</sup> Amendments can incorporate other filings by reference (Form 312, Instructions, p 1.) However, a properly filed document would have to be filed in this proceeding in order to include the cross reference. Based on the information in the Order, Lockheed did not follow this required procedure in the present case.

The Order should be corrected to state that Lockheed did not properly comply with the Commission's notice requirements as set forth in 47 CFR § 1.65 and Form 312. Lockheed failed to file an amendment stating that it had acquired Comsat and its subsidiaries, including EMS. Further, it failed to provide notice that as of August 3, 2000, it assumed control over a Comsat subsidiary that had pleaded guilty to defrauding the U.S. Defense Department and obstructing justice. No such amendments were filed with the Commission or served upon the other parties to this proceedings.

These rule violations should be referred to the Enforcement Bureau.

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

In the Order at ¶ 8, the Commission references Comsat/Lockheed's claims that LRT and/or its members' primary aim in bringing the instant action is "to harass Comsat and its successors and/or assigns by abusing the Commission's processes in order to cause Comsat and its successors and/or assigns to capitulate to LRT and/or its members' demands for compensation relating to a long ago corporate dispute<sup>27</sup> involving the LRT members and Comsat." The Commission then undertook the unusual and highly prejudicial action of issuing the following warning:

We hereby expressly warn LRT and/or its members that they may face summary dismissal of their pleadings or the alternative procedure of prior screening of their pleadings should they file abusive or harassing pleadings with the agency. Order ¶ 8.

The findings by the Commission are unfounded, erroneous and highly prejudicial. Indeed, as noted in the Order they are based on the representations of Lockheed and Comsat, two companies that have admitted to filing false information with the

---

<sup>27</sup> As the Commission has been informed in the Lockheed-Intelsat transfer proceeding (IB Docket No. 02-87), the referenced "corporate dispute" continues. LRT has secured a critical affidavit establishing that the "long ago" Comsat orchestrated law suit was based upon fraud. Actions are being pursued by LRT on the state and federal level to annul prior judgments and sanction those companies and officers and agents responsible for perpetrating the fraud upon the courts.

Commission<sup>28</sup>. Most importantly, the admonition violates the fundamental Constitutional rights of LRT and its members. Accordingly, LRT petitions for the immediate retraction of ¶ 8 in its entirety.

First and foremost, the LRT filings against Comsat have from the outset had the sole purpose of seeking the intervention of the Commission to sanction illegal conduct on the part of Comsat, and later Lockheed. It is also noted that not all of the actions to which LRT has been a party were commenced by LRT. Indeed, two of the key proceedings – declaratory relief actions involving Comsat’s compliance with the Satellite Act- were commenced in 1996 by the Commission on its own motion, following the submission of letters of inquiry by LRT.<sup>29</sup> Such Commission actions, a highly unusual circumstance, without question reflected the staff’s judgment that the allegations raised by LRT against Comsat were material, substantive and serious. Further, other actions in which LRT has participated were brought by customers and competitors of Comsat.<sup>30</sup>

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

For over six years, LRT has sought the Commission’s intervention against Comsat and later Lockheed. Over this period, LRT has found that its pleadings have been required to remain on file literally for years before being reviewed and adjudicated by the Commission. Other requests have been summarily rejected by the staff.<sup>31</sup> One LRT action, a rule making petition seeking the adoption of a rule to prohibit Comsat<sup>32</sup>

---

<sup>28</sup> See Comsat Merger Order, double numbered fn.29 [second].

<sup>29</sup> See *In the Matter of Comsat Corporation, et al., Memorandum Opinion and Order*, FCC 97-422, 13 FCC Rcd 2714, 2726 (“*Consolidated Order*”)(1998), *recon. denied*, 15 FCC Rcd 19,516 (2000).

<sup>30</sup> *Id.*

<sup>31</sup> Over the last two years, successive requests for subpoenas to access Comsat and Lockheed documents filed by LRT with the Chief of the International Bureau have been summarily rejected.

<sup>32</sup> Comsat spun off the stock of its entertainment businesses, including the movie distribution business in June 1997.

from continuing its open channel distribution of pornographic movies to one million hotel rooms throughout the US, has remained on file before the Commission since December 29, 1995, without any agency action<sup>33</sup>.

It is true that LRT members have certain commercial disputes with Comsat and Lockheed, but under the circumstances obtaining in this case, this fact should not and cannot be considered by an impartial administrative agency such as the Commission as it reviews the allegations at issue. Absent evidence to the contrary, the motivations of LRT should not and cannot be a relevant factor in the Commission's decision making process, as it reviews the serious allegations of wrongdoing raised against Comsat and Lockheed by LRT. Such motivations, absent proof to the contrary, cannot be cited in support of an ad hoc admonition to forestall the continued exercise of fundamental Constitutional rights by LRT members.

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

Furthermore, and of primary concern, one must consider the entire contents of ¶ 8 in the Order. Here, the Commission accepts the baseless and unsupported allegations of Comsat and Lockheed that LRT's actions in seeking the independent intervention of the agency should be found to constitute a misuse of Commission process to harass the companies. The Commission then has included an admonishment of LRT—warning it against the submission of further pleadings.

---

<sup>33</sup> Ten days ago, LRT forwarded a letter to Chairman Powell and the other Commissioners requesting that attention be given to LRT's pending hotel movie rule making petition, which seeks a rule requiring that open access to such indecent movies previously distributed by Comsat be restricted through "lock-box" channel selectors so as to protect American children and families.

What is truly incredible to LRT is the fact that the Commission voted to undertake this unusual, offensive and damaging action against LRT, notwithstanding the fact that in other proceedings, it found Comsat/Lockheed guilty of filing false information with the agency in an effort to conceal the licensee status of EMS, and required that the matter be referred for further action to the Enforcement Bureau.<sup>34</sup> This remedial action against Comsat, a government sponsored licensee, came solely as a result of the continuing research of and public interest filings made by LRT and submitted to the Commission.

For the Commission to find Comsat/Lockheed guilty of filing false information based on LRT's pleadings and then to admonish LRT for harassing the companies as a result of the submission of evidence by LRT is illogical, unsupportable, prejudicial and illegal. The improper admonishment of LRT by the Commission constitutes a direct and serious infringement of the First Amendment rights of free speech and petition and the right of due process of LRT and its members.

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

In comparison, for their part, LRT members have been victimized by Comsat/Lockheed executives, who, using their corporate offices, have abused government process and power, stolen property and services, engaged in coercion and

---

<sup>34</sup> The Commission notes in double numbered footnote 29 [second] that the referral to the Enforcement Bureau comes after the statute of limitation has expired. In LRT's view, this represents further evidence of the staff's anti-LRT bent of mind. LRT provided the evidence on which the Comsat rule violation is based over a year ago. However, the staff purposely avoided dealing with the matter until July 1. This action came, according to the Commission, beyond the state of limitations, thereby benefiting Comsat/Lockheed. Such a delay in this instance has obviously denied a just outcome, as it will not be possible to issue a fine or forfeiture order against Comsat/Lockheed, unless the Commission finds, as LRT urges, that the statute of limitations should be tolled as a result of the fraudulent conduct of Comsat/Lockheed.

intimidation and obstructed justice by concealing and filing false and fraudulent information. These practices are illegal and unethical and cannot be tolerated.

Lockheed, from the time it merged with Comsat, has refused all efforts by LRT to explore the various serious issues involved in this dispute, choosing rather to proceed with abusive legal proceedings.<sup>35</sup> This type of stonewalling and abuse of legal process is exactly the type of illegal and unethical conduct and malfeasance by corporate officers, which the White House<sup>36</sup> and the Congress are presently acting to police and eliminate.<sup>37</sup>

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

Accordingly, LRT petitions the Commission to retract ¶ 8 in its entirety. LRT requests that this retraction be undertaken on an expedited basis, so that the language will be removed from the Order before LRT files its Petition for Review with the US Court of Appeals.

Finally, LRT requests that appropriate language be added to the Order properly commending LRT for its continued vigilance and dedication in serving the public interest by searching out and identifying conduct by Comsat and Lockheed and their subsidiaries, which violates federal law and the Commission's rules and policies.

---

<sup>35</sup> Lockheed even refused a series of invitations extended by Rep. Sue W. Kelly (R-NY) to discuss the issues involved.

<sup>36</sup> Unethical business practices by corporate leaders amount to theft and fraud... We will defend the rights and interests of every American worker and shareholder, and we will not accept anything less than complete honesty." Radio Speech by President George W. Bush, July 20, 2002. <http://www.whitehouse.gov/news/releases/2002/07/20020720.html>

<sup>37</sup> Legislation currently pending before the 107<sup>th</sup> Congress seeks real-time corporate disclosures of corporate information to protect investors; the return of funds to investors who have lost money in the markets as a result of corporate malfeasance; increased criminal penalties for corporate wrongdoing and increased powers for the Securities and Exchange Commission. See Opening Statement of Rep. Michael G. Oxley (R-OH), Chairman House Committee on Financial Services. House-Senate Conference Committee on Corporate Accountability Legislation, July 19, 2002



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

This Motion references a number of material rule violations by Lockheed, including, among others, its failure to report the Comsat merger, its repeated failure to report the pending criminal prosecution in its series of Form 312 applications and amendments; and its failure to timely report the execution of the criminal plea agreement with the Department of Justice. This constitutes evidence of continuing conduct on the part of Lockheed involving misrepresentation and failure to disclose.

The Commission in its 1990 modification of the character policy addressed the relevant non-FCC misconduct that the Commission, at its discretion, may consider in licensing decisions.<sup>38</sup> Under this policy, the Commission will consider a felony conviction as relevant to a licensee's character qualifications and an indication of its propensity to obey the law.<sup>39</sup> The Commission also correctly will take into consideration mitigating factors, such as willfulness, frequency, correctness, and seriousness of the misconduct as well as efforts to remedy the wrong and overall record of compliance with Commission rules and policies.<sup>40</sup>

The matters raised in this Motion clearly reflect a series of actions on the part of Lockheed constituting serious violations of the Commission's rules in an effort to conceal involvement of the company and its officers with EMS and its criminal activities. Comsat and Lockheed have admitted to filing false information<sup>41</sup> and, based on evidence presented herein, have participated in a course of conduct designed to conceal and/or misrepresent facts to the Commission. Such conduct on the part of licensees cannot be tolerated.

Over the years, in a continuing series of rulings, the Commission has observed that fraud "is a subject area the Commission has traditionally considered to be pertinent

---

<sup>38</sup> *Modified Character Policy Statement* at 3252.

<sup>39</sup> *Id.*

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

<sup>41</sup> See Comsat Merger Reconsideration Order, double numbered fn 29 [second].

to its evaluation of a licensee's character." *Decision*, 13 F.C.C.R. at 15,038. Commission regulations specifically forbid applicants from "mak[ing] any misrepresentation or willful material omission bearing on any matter...." 47 C.F.R. § 1.17; *see also* 47 U.S.C. § 312(a)(1). The Commission has found that a licensee's complete candor is important because "effective regulation is premised upon the agency's ability to depend upon the representations made to it by its licensees." *Leflore Broad. Co. v. Commission*, 636 F.2d 454, 461 (D.C. Cir. 1980); *see also Character Policy*, 5 F.C.C.R. at 3253. Also, it is well recognized that the Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency. *See Swan Creek Communications, Inc. v. Commission*, 39 F.3d 1217, 1221-24 (D.C. Cir. 1994); *Garden State Broad. Ltd. v. Commission*, 996 F.2d 386, 393-94 (D.C. Cir. 1993).

Further, under section 1.17 of the Commission's rules, "[n]o applicant ... shall in ... any ... written statement submitted to the Commission ... make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission."<sup>42</sup> The Commission has defined misrepresentation as an "intentional misrepresentation of fact intended to deceive"<sup>43</sup> and has concluded that an intent to deceive is an essential element of a misrepresentation finding.<sup>44</sup> The Commission has also stated that intent is a "factual question that may be inferred if other evidence shows that a motive or logical desire to deceive exists . . ."<sup>45</sup> In the present case, one is presented with both the admission of filing false information and evidence of a continuing pattern of conduct involving repeated failures to disclose information to the Commission and other required parties. The ultimate facts are often proved through circumstantial evidence, as such evidence may be the only way of proving knowledge or intent.<sup>46</sup>

---

<sup>42</sup> 47 C.F.R. § 1.17.

<sup>43</sup> *Silver Star Communications-Albany, Inc.* 3 FCC Rcd 6342, 6349 (Rev. Bd. 1988).

<sup>44</sup> *See Swan Creek Communications v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994).

<sup>45</sup> *Black Television Workshop*, 8 FCC Rcd 4192, 4198, n. 41 (1993), recon. denied, 8 FCC Rcd 8719 (1993), rev. denied, 9 FCC Rcd 4477 (1994), *aff'd sub nom. Woodfork v. FCC*, 70 F.3d 639 (D.C. Cir. 1995) (affirming ALJ's finding that the record encompasses documents containing misrepresentations).

<sup>46</sup> *Ned N. Butler and Claude M. Gray, D.B.A. The Prattville Broadcasting Co., Prattville, Ala., Memorandum Opinion and Order*, 5 FCC 2d 601, 603-604 (Rev. Bd. 1966) (internal citations omitted). In criminal cases, where the burden of proof is higher, the D.C. Circuit has recognized that "[i]ntent may, and generally must, be proved circumstantially . . .," *United States v. Jackson*,

The Commission correctly considers misrepresentation to be a serious violation,<sup>47</sup> as its entire regulatory scheme ``rests upon the assumption that applicants will supply [the Commission] with accurate information."<sup>48</sup> For this reason, applicants before the Commission are held to a high standard of candor and forthrightness.<sup>49</sup>

The conduct referenced herein is unacceptable on the part of any licensee, but clearly is beyond the pale for Lockheed, the nation's largest defense contractor, which must be expected to comply with the highest ethical and legal standards. It cannot be permitted to take part in such deceptive practices.

Clearly, based on the continuing misconduct of Lockheed, the public interest will be served by correcting, clarifying and rescinding the Order as requested in this Motion. This is especially the case in view of the recent attention directed to corporate fraud and deception by the Administration and the Congress, following the Enron and related scandals. All government regulators must be vigilant, and aggressively search out and sanction all illegal conduct and corruption on the part of corporations and their senior officers. This is just such a case.

---

513 F.2d 456, 461 (D.C. Cir. 1975) (footnotes omitted), and has stated that it does not distinguish between ``direct and circumstantial evidence in evaluating the sufficiency of the evidence." *United States v. Lam Kwong-Wah*, 924 F.2d 298, 303 (D.C. Cir. 1991), cert. denied, 506 U.S. 901, 113 S.Ct. 287, 121 L.Ed.2d 213 (1992).

<sup>47</sup> *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8478, para. 60 (1995).

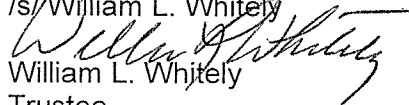
<sup>48</sup> Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1210, para. 58 (1986) (subsequent history omitted) ("Character Policy Statement"). "The integrity of the Commission's processes cannot be maintained without honest dealing by regulated companies." See *id.*, 102 FCC 2d at 1211, para. 61. "Regardless of the factual circumstances of each case, misrepresentation to the Commission is always an egregious violation." Forfeiture Policy Statement, 12 FCC Rcd at 17098, para. 21. The Commission may treat even the most insignificant misrepresentation as an event disqualifying a licensee from further consideration. Character Policy Statement, 102 FCC 2d at 1210, para. 60. See also Forfeiture Policy Statement, 12 FCC Rcd at 17098, para. 21.

<sup>49</sup> *WHW Enterprises Inc., v. FCC*, 753 F.2d 1132, 1138 (D.C. Cir. 1985) (upholding Commission sanctions against license applicant for misrepresentation); *Sea Island Broadcasting Corp. of S.C.*, 60 FCC 2d 146, 147, para. 3 (1976) ("The Commission insists on complete candor from its licensees and where . . . that candor has been found lacking in response to official Commission inquiries, the Commission has terminated the license."), *aff'd*, *Sea Island Broadcasting Corp. of S.C. v. Federal Communications Commission*, 627 F.2d 240 (D.C. Cir. 1980).

forced liquidation of all communications assets of Comsat and Lockheed, with all proceeds to be transferred to a Digital Conversion Fund to be administered by trustees appointed by the Commission, for the purpose of financing, through loans and/or grants, the digital upgrade of transmission facilities of qualifying small market, public and minority owned television stations and cable systems. We also find reason to determine whether the members of Comsat and Lockheed former and current senior management and agents violated their public trust, and, if so, we will adopt orders permanently prohibiting their participation in the management of companies, which directly or indirectly control licenses issued by the Commission, and to order appropriate fines and forfeitures.

Respectfully submitted,

/s/ William L. Whitely



William L. Whitely

Trustee

Litigation Recovery Trust

515 Madison Avenue Suite 2306

New York, New York 10022-5402

July 22, 2002

**CERTIFICATE OF SERVICE**

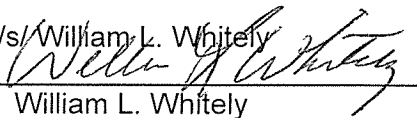
I, William L. Whitely, hereby certify that I have this 22nd day of July, 2002 directed that the foregoing MOTION FOR CORRECTIONS, CLARIFICATIONS AND RETRACTIONS be forwarded via Email, Federal Express or US Mail, postage prepaid, to the following:

Rosemary C. Harold  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

*Attorney for Comsat, Lockheed Martin,*

Jim Ball,  
Associate Bureau Chief for Policy  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

/s/ William L. Whitely

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

