

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

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| In the Matter of                         | ) |                                 |
|  | ) |                                 |
| COMSAT Corporation                       | ) | Fee Control Nos.                |
|  | ) | 0109268835483010, <i>et al.</i> |
| Request for Reduction of Regulatory Fees | ) |                                 |
| For Fiscal Years 1998, 2000, and 2001    | ) |                                 |

**ORDER**

**Adopted: June 27, 2007**

**Released: July 10, 2007**

By the Commission: Commissioners Copps and Adelstein concurring and issuing separate statements.

**I. INTRODUCTION**

1. In this Order, we address a request for reduction of regulatory fees filed by COMSAT Corporation (“COMSAT”).<sup>1</sup> COMSAT argues that the regulatory fees imposed on it by the Federal Communications Commission (“FCC” or “Commission”) for fiscal years (FY) 1998, 2000, and 2001 significantly exceeded the regulatory costs incurred by the Commission, and seeks a refund of a portion of these fees. Upon further analysis, we agree that the regulatory fees imposed by the Commission for those years overstated the costs associated with regulation of COMSAT and grant in part COMSAT’s request. Accordingly, we reduce COMSAT’s combined regulatory fees for FY 1998, 2000, and 2001 from \$5.153 million to \$3.653 million. Thus, we will provide a refund of \$1.5 million.

**II. BACKGROUND**

2. The Commission’s authority to collect regulatory fees derives from section 9 of the Communications Act of 1934, as amended (“the Act”), which mandates the collection of regulatory fees to recover the costs of “enforcement activities, policy and rulemaking activities, user information services, and international activities.”<sup>2</sup> Until 1995, COMSAT, the sole United States representative and signatory to the International Telecommunications Satellite Organization (“Intelsat”) and the International Maritime Satellite Organization (“Inmarsat”), was exempted from paying regulatory fees for its Intelsat and Inmarsat space stations.<sup>3</sup> Subsequently, however, the Commission established a “signatory fee”

<sup>1</sup> See Letter to Anthony Dale, Managing Director, Federal Communications Commission, from Lawrence W. Secrest, III, Attorney for COMSAT, dated November 16, 2006 (“COMSAT November 16, 2006 Letter”).

<sup>2</sup> 47 U.S.C. § 159(a)(1).

<sup>3</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, MD Docket No. 95-3, Report and Order, 10 FCC Rcd 13512, 13550, para. 110 (1995) (“1995 Reg Fee Order”). The Commission stated that for FY 1996, it intended “to explore other ways to recover the regulatory costs imposed on the Commission on behalf of COMSAT’s participation in the Intelsat and Inmarsat programs.” See *1995 Reg Fee Order*, 10 FCC Rcd at 13550, para 110.

category to recover costs related to its regulatory role with respect to signatories to Intelsat and Inmarsat.<sup>4</sup> That decision was later invalidated by the United States Court of Appeals for the District of Columbia (“D.C. Circuit”).<sup>5</sup>

3. In 1999, COMSAT’s exemption from regulatory fees was successfully challenged by a competitor, PanAmSat. Specifically, the D.C. Circuit ruled that the Act did not compel the Commission to treat COMSAT as exempt from section 9 regulatory fees with respect to satellites that COMSAT operated as a signatory to Intelsat.<sup>6</sup> Pursuant to the court’s directive, the Commission held that COMSAT was required to pay section 9 regulatory fees as a geostationary satellite operator<sup>7</sup> and assessed the section 9 satellite fee against COMSAT for FYs 2000 and 2001.<sup>8</sup> Additionally, the Commission responded directly to the remand of the *Panamsat* case by assessing fees for FY 1998.<sup>9</sup> As a result of these actions, COMSAT paid approximately \$1.9 million for FY 1998; approximately \$1.6 million for FY 2000; and approximately \$1.7 million for FY 2001.

4. In 2003 and after it had paid the assessed fees, COMSAT requested that the Commission reduce COMSAT’s liability for the fees.<sup>10</sup> After the Commission’s Office of the Managing Director (“OMD”) rejected the arguments advanced by COMSAT as a basis for a fee reduction,<sup>11</sup> COMSAT filed an Application for Review of this decision.<sup>12</sup> COMSAT alleged, *inter alia*, that OMD improperly ignored COMSAT’s unique status as the signatory to INTELSAT, and that the fees imposed on COMSAT seemed “to bear no relation to the signatory-related costs incurred by the Commission.”<sup>13</sup> In an Order released on July 7, 2006, the Commission granted COMSAT’s Application for Review and remanded its request for a reduction of regulatory fees for FYs 1998, 2000, and 2001 back to OMD for further consideration.<sup>14</sup> Specifically, the Commission indicated that OMD “did not fully consider” whether the

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<sup>4</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, MD Docket No. 96-84, Report and Order, 11 FCC Rcd 18774, 18787-91, paras. 37-47 (1996).

<sup>5</sup> See *COMSAT v. FCC*, 114 F.3d 223 (D.C. Cir. 1997). In that case, the court held that the Commission had exceeded its statutory authority by charging COMSAT a regulatory fee. *Id.*, 114 F.3d at 225.

<sup>6</sup> *Panamsat v. FCC*, 198 F.3d 890 (D.C. Cir. 1999).

<sup>7</sup> *Assessment and Collection of Fees for Fiscal Year 2000*, MD Docket No. 00-58, Report and Order, 15 FCC Rcd 14478 (2000), *aff’d sub nom. COMSAT Corp. v. FCC*, 283 F.3d 344 (D.C. Cir. 2002) (“*COMSAT II*”). See also *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, Report and Order, 16 FCC Rcd 13525 (2001), *recon. denied*, 18 FCC Rcd 6950 (2003).

<sup>8</sup> On July 18, 2002, INTELSAT was succeeded by INTELSAT LLC, a privatized entity that became the licensee of the COMSAT satellites at issue. See *Lockheed Martin Corp.*, IB Docket No. 02-87, Order on Reconsideration, 18 FCC Rcd 16605, 16606-07, paras. 2-3 (2003).

<sup>9</sup> *Assessment and Collection of Regulatory Fees for Fiscal year 1998*, MD Docket No. 98-36, Memorandum Opinion and Order, 18 FCC Rcd 6944 (2003), *aff’d sub nom. Panamsat v. FCC*, 370 F.3d 1168 (D.C. Cir. 2004).

<sup>10</sup> COMSAT paid no regulatory fees for FYs 1995, 1997, and 1999 based on the Commission’s former view that COMSAT was exempt from the satellite fee. COMSAT paid a so-called “signatory fee” in FY 1996, which was subsequently refunded when the D.C. Circuit found the fee unlawful.

<sup>11</sup> Letter from Mark A. Reger, Chief Financial Officer, Federal Communications Commission, to Robert A. Mansbach (Nov. 13, 2003).

<sup>12</sup> COMSAT Corporation Request for Reduction of Regulatory Fees for FY 2001, 2000, and 1998, Application for Review, filed Dec. 15, 2003 (“Application for Review”).

<sup>13</sup> Application for Review at 7-16 (*quoting COMSAT II*, 283 F.3d at 349).

<sup>14</sup> *COMSAT Corporation Request for Reduction of Regulatory Fees for FY 2001, 2000, and 1998*, Order, 2006 WL 1881016 (2006).

regulatory fees imposed on COMSAT were linked to signatory-related costs, and remanded the proceeding to OMD to do so.<sup>15</sup>

5. On two separate occasions, COMSAT filed requests for records pursuant to the Freedom of Information Act (“FOIA”) related to signatory and space station regulatory fees assessed for COMSAT Corporation for FYs 1996, 1998, 1999, 2000, and 2001 in an effort to calculate an appropriate regulatory fee. Specifically, COMSAT sought “all documents . . . containing or reflecting information” regarding the Commission’s determination of the fees attributable to regulatory oversight of COMSAT and/or its INTELSAT-related activities. Based on this information, COMSAT estimates it overpaid \$1.1 million in regulatory fees for 2001.<sup>16</sup> COMSAT based its calculation upon three factors: (1) personnel costs in the Commission’s International Bureau; (2) personnel costs in supporting Bureaus and Offices, such as the Office of General Counsel and OMD; and (3) non-personnel overhead expenses, such as rent, heat, and maintenance.<sup>17</sup> COMSAT states that it limited its analysis to a single fiscal year because the documentation for FY 2001 was “most complete.”<sup>18</sup>

### III. DISCUSSION

6. Based upon the specific facts and circumstances in the record before us, and given the unique nature of COMSAT’s business and operations, we conclude that COMSAT’s regulatory fees for FYs 1998, 2000, and 2001 should be reduced by a total of \$1.5 million, from \$5.153 million to \$3.653 million. We describe our methodology for deriving this figure below.<sup>19</sup> Accordingly, we order the Commission’s Chief Financial Officer to refund \$1.5 million to COMSAT at the earliest practicable time. We agree that COMSAT is “inherently different than traditional U.S. space station licensees”<sup>20</sup> and that the Commission’s per-geosynchronous space station fees were too high in this case. As the D.C. Circuit observed, the assessed fee amounts seemed to bear no relationship to the cost of regulating COMSAT. Specifically, as COMSAT points out, the more than \$5 million assessed in the three subject years does not appear to be supported by the number of personnel that worked on COMSAT issues and the associated indirect costs.

7. As indicated above, the Commission’s authority to collect regulatory fees derives from section 9 of the Act, which mandates the collection of regulatory fees to recover the costs of “enforcement

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<sup>15</sup> *Id.* at para. 3. After further considering COMSAT’s arguments in light of the Commission’s instructions in the remand order, OMD appropriately referred its analysis to the Commission pursuant to section 0.5(c) of the Commission’s rules.

<sup>16</sup> COMSAT November 16, 2006 Letter.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> We have consistently rejected arguments that regulatory fees must be precisely calibrated, on a service-by-service basis, to the actual costs of the Commission’s regulatory activities for that service, *see Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order, 19 FCC Rcd 11662, 11665-67 paras. 5-11 (2004), and we retain this policy herein. We note that we are not revisiting the methodology for calculating regulatory fees for this class or any other class of regulatee or licensee. However, the special nature of the facts and circumstances before us here warrants consideration of additional factors to ensure we comport with the D.C. Circuit’s directive. We note in this regard that COMSAT is unique in that there were no other similarly-situated carriers or companies providing telecommunications services to share in the costs and benefits of relevant Commission regulatory activity during the time at issue. These circumstances warrant using the approach contained in this order to respond to the court’s concerns but should not be considered precedent for the proposition that fees generally must be apportioned according to cost.

<sup>20</sup> Application for Review at ii.

activities, policy and rulemaking activities, user information services, and international activities.”<sup>21</sup> Section 1.1163 of our rules states that the fees assessed shall “[b]e derived by determining the full-time equivalent number of employees performing enforcement activities, policy and rulemaking activities, user information services, and international activities . . . adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities, including such factors as service coverage area, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.”<sup>22</sup> Fees may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.<sup>23</sup> Section 1.1160(a)(1) of the Commission’s rules provides that regulatory fees may be refunded when no regulatory fee is required or an excessive fee has been paid.<sup>24</sup>

8. COMSAT requests a refund of \$1.1 million for FY 2001 alone, and has indicated that it believes this amount would also be returned for the other two fiscal years, *i.e.*, FY 1998 and FY 2002.<sup>25</sup> COMSAT therefore requests a total refund of \$3.3 million. As described above, COMSAT calculates this amount by adding: (1) personnel costs for the Commission’s International Bureau; (2) personnel costs incurred by the Commission outside of the operating bureaus,<sup>26</sup> such as the Office of General Counsel; and (3) non-personnel overhead expenses, such as rent, heat, and maintenance. We generally accept COMSAT’s estimate of the personnel costs incurred by the International Bureau, and presume that similar costs were incurred during FYs 2000 and 1998 with the exception indicated below. However, we conclude that the remainder of COMSAT’s analysis is flawed, as it is premised upon two incorrect assumptions that understate the Commission’s true cost of regulating COMSAT during the three years in question. Specifically, COMSAT underestimates the COMSAT-related costs incurred by Commission staff outside of the operating bureaus, and ignores costs incurred by other bureaus within the Commission, such as the Enforcement and Consumer and Governmental Affairs Bureaus.

9. COMSAT assumes that the Commission’s regulation of COMSAT outside of the operating Bureaus during the subject years consumed resources in the same proportion as other regulatees. We disagree. As a key player in a complex marketplace, with significant legislative interest, COMSAT was responsible for a proportionately greater percentage of costs incurred by Commission staff. In addition, we note that COMSAT was involved in litigation with the Commission during this time period<sup>27</sup> that resulted in additional and significant costs to our Office of General Counsel. We believe that it is appropriate to consider such litigation costs as “direct” costs. In addition, during this time period, there were several complex matters before the Commission that involved the interests of COMSAT and that involved Commission staff from other Bureaus and Offices.<sup>28</sup>

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<sup>21</sup> 47 U.S.C. § 159(1); *see also* 47 C.F.R. § 1.1151.

<sup>22</sup> 47 C.F.R. § 1.1163.

<sup>23</sup> 47 C.F.R. § 1.1166.

<sup>24</sup> 47 C.F.R. § 1.1160(a)(1).

<sup>25</sup> COMSAT November 16, 2006 Letter, Attachment at 4.

<sup>26</sup> COMSAT defines “operating bureaus” during the subject years as the Cable Services Bureau, Common Carrier Bureau, Consumer Information Bureau, Enforcement Bureau, International Bureau, Mass Media Bureau, and Wireless Telecommunications Bureau.

<sup>27</sup> *See, e.g., COMSAT Corp. v. FCC*, 283 F.3d 344 (D.C. Cir. 2002); *COMSAT Corp. v. FCC*, 250 F.3d 931 (5<sup>th</sup> Cir. 2001); *Panamsat v. FCC*, 198 F.3d 890 (D.C. Cir. 1999).

<sup>28</sup> *See, e.g., IDB Mobile Communications v. COMSAT*, Memorandum Opinion and Order, 16 FCC Rcd 11474 (2001); *COMSAT v. IDB Mobile Communications*, Memorandum Opinion and Order, 15 FCC Rcd 7906 (Enf. Bur.

(continued....)

10. Taking the factors above together, COMSAT understates what it should have paid for FYs 1998, 2000, and 2001. For these reasons, we grant COMSAT's request only in part. Using COMSAT's estimate as a starting point, we have adjusted its figure to account for the additional factors outlined here. We conclude that the Commission incurred approximately \$3.653 million dollars in costs for the benefit of COMSAT during the three years in question. This figure is approximately \$1.5 million less than the fees paid by COMSAT for FYs 1998, 2000, and 2001. Thus, instead of granting COMSAT's request for a \$3.3 million refund, we grant a refund of \$1.5 million.

#### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to Sections 1, and 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), and section 1.1160 of the Commission's rules, 47 C.F.R. § 1.1160, COMSAT Corporation's Application for Review is HEREBY GRANTED to the extent discussed herein.

12. IT IS FURTHER ORDERED that the Commission's Chief Financial Officer refund \$1.5 million to COMSAT at the earliest practicable time.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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2000), *review denied*, *COMSAT v. IDB Mobile Communication*, Order on Review, 15 FCC Rcd 14697 (2000); *COMSAT Corp. v. Stratos Mobile Networks (USA) LLC*, Memorandum Opinion and Order, 15 FCC Rcd 22338 (Enf. Bur. 2000). In addition, there may have been additional formal complaints filed with the Enforcement Bureau that were eventually settled prior to Commission action. Moreover, COMSAT contributed to the Universal Service Fund. *See COMSAT v. FCC*, 250 F.3d 931 (5<sup>th</sup> Cir. 2001). *See also COMSAT Corp., Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, IB Docket No. 98-60, Order and Notice of Proposed Rulemaking, 13 FCC Rcd 14083 (1998) (addressing COMSAT's request for reclassification as a non-dominant carrier with respect to several services).

**CONCURRING STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: COMSAT Corporation; Request for Reduction of Regulatory Fees For Fiscal Years 1998, 2000, and 2001; Fee Control Nos. 0109268835483010, et al.*

I concur in today's decision because I do not believe it is an entirely consistent application of our existing regulatory fee methodology. While I have long advocated a general overhaul of that methodology, absent comprehensive reform I do not believe we should make exceptions—especially retroactive ones—that deprive the Commission of a substantial sum of money.

**CONCURRING STATEMENT OF  
COMMISSIONER JONATHAN ADELSTEIN**

*Re: COMSAT Corporation; Request for Reduction of Regulatory Fees For Fiscal Years 1998, 2000, and 2001; Fee Control Nos. 0109268835483010, et al.*

I recognize the Commission's authority to revisit certain regulatory fees paid by COMSAT consistent with the language of the D.C. Circuit in the COMSAT II ruling. However, I am only able to concur in this Order because the analysis is not consistent with the regulatory fee approach that we have used in our previous regulatory fee orders, and strays quite far from these earlier Commission determinations.

Ironically, I have long advocated that the Commission adhere more closely to Section 9 of the Communications Act by assessing regulatory fees that are derived by determining the full-time equivalent number of employees (FTEs) performing the relevant enforcement activities, policy and rulemaking activities, user information services and international activities.<sup>29</sup> But the Commission has not chosen to take such an approach, instead relying on repeated proportionate increases of the regulatory fee schedule from the previous year, adjusted to reflect increases or decreases in payment units.

Consequently, I am troubled by our decision here to apply Section 1.1163 of our rules for the benefit of a single company. If the Commission is to begin applying Section 1.1163 on a more rigorous basis, it should do so equitably for all regulatees, and not reserve such an analysis for the simple benefit of refunding one licensee \$1.5 million.

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<sup>29</sup> See CONCURRING STATEMENT OF COMMISSIONER JONATHAN ADELSTEIN, *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, MD Docket No. 03-83, FCC 03-184 (2003).