This plain language of the Act is fully supported by the legislative history. The Senate Report states that "[t]he U.S. operating entity will be the sole supplier of U.S. space segment capacity obtained from the system."[5] That intent is echoed elsewhere in the legislative history.[6]

The legislative history also demonstrates that Congress specifically rejected a "carrier's carrier" structure, under which AT&T and other carriers would retain responsibility for the end-to-end service. Congress instead chose a "participating" or "connecting" carrier model, under which COMSAT "would retain total responsibility for the satellite space segment, and any competing U.S. domestic common carrier, international common carrier, or private communications system that picks up and delivers traffic from and to the Earth terminal stations would retain total responsibility for that part of the overall service."[7] The Act thus can only be read as designating COMSAT to be the sole provider of Inmarsat space segment to U.S. users.[8]

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[5] S. Rep. No. 1036, 95th Cong., 2d Sess. 6 (1978).

[6] *See, e.g.*, 124 Cong. Rec. 24,624, 24,625 (1978) (statement of Sen. Hollings) ("The U.S. operating entity participating in that system will be the sole supplier of U.S. space segment capacity obtained from the system.").

[7] H.R. Rep. No. 1134, 95th Cong., 2d Sess. 11 (1978); *see also* S. Rep. No. 1036, *supra*, at 8-10.

[8] Because voting power in the Inmarsat Council is based on investment share, which in turn is based principally on relative space segment utilization, this requirement helps to maximize U.S. influence in Inmarsat.

The Commission itself adopted this construction of the statute in its initial proceedings to implement the Act, and has adhered to this view ever since. Barely six months after the Act's enactment, the Commission carefully reviewed the statute's terms and legislative history, noting in particular Congress's decision to opt for a participating carrier, rather than a carrier's carrier, service structure. Based on this review, the Commission concluded that the Act requires U.S. carriers to obtain Inmarsat space segment service through COMSAT:

> "Pursuant to the Act's overall operational scheme for the exchange of maritime satellite traffic . . ., Comsat will participate with interconnecting shore-end carriers in providing service. Comsat will be the sole provider of space segment capacity obtained from INMARSAT. Interconnecting U.S. carriers will provide customer access to the satellite system by means of their onshore networks. Comsat will receive and assemble all traffic for appropriate routing, either inbound or outbound."[9]

In 1983, shortly after the commencement of Inmarsat services, the Commission squarely confronted the issue raised by the MTN Application. The Commission denied a Western Union International, Inc. ("WUI") request for permission to route shore-to-ship traffic to the IOR through foreign Signatories at

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[9] *Implementation of Requirements of the International Maritime Satellite Telecommunications Act*, 71 F.C.C.2d 1069, 1080 (1979) (emphasis added); *see also id.* at 1071; Notice of Proposed Rulemaking, 70 F.C.C.2d 1968, 1972-73 (1979). This interpretation of the statute is entitled to special weight. *United States v. National Ass'n of Sec. Dealers, Inc.*, 422 U.S. 694, 718-19 (1975) (considerable weight given to substantially contemporaneous and consistent interpretation of statute by agency charged with its administration); *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984) (similar); *see also id.* at 844-45 & n.14 (numerous supporting citations).

its discretion, even though COMSAT itself had no IOR earth station facilities and had not challenged WUI's request.[10] The Commission rejected WUI's "assert[ion] that the Maritime Satellite Act does not preclude such an arrangement,"[11] and ruled that the Act bars U.S. carriers from independently routing U.S.-originating traffic through foreign LESs:

> "As the U.S. designated operating entity in INMARSAT, Comsat is responsible for providing the space segment for international maritime services. U.S. domestic and international carriers are to interconnect with Comsat for the provision of maritime satellite service. The Act anticipates a 'participating carrier' mode of operation in which Comsat is the sole provider of space segment capacity obtained from INMARSAT, and U.S. domestic and international carriers are limited to providing customer access to the satellite system by means of their offshore networks. Accordingly, carriers must route their maritime satellite traffic through Comsat."[12]

The Commission has never retreated from this interpretation of the Act. Indeed, the Commission reaffirmed COMSAT's exclusive statutory role in providing Inmarsat space segment when it authorized COMSAT to provide Inmarsat aeronautical services. In that proceeding, the Commission initially proposed permitting a consortium of U.S. carriers to obtain space segment capacity directly from Inmarsat, but recognized that the Act would have to be amended to allow such an arrangement.[13] In its *Aeronautical*

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[10] *Communications Satellite Corp.*, FCC 83T-6, File Nos. I-P-C-82-010, *et al.*, mimeo at 6, 13 (Telecom. Comm. Apr. 8, 1983).

[11] *Id.* at 13.

[12] *Id.* (emphasis added).

[13] *Provision of Aeronautical Services via the Inmarsat System,*

Order, the Commission rejected its initial proposal for "direct access" to Inmarsat, and instead adopted a policy under which U.S. service providers other than COMSAT could own and operate aeronautical earth stations, but "access to Inmarsat aeronautical space segment . . . would be through Comsat."[14] The Commission stated: "As the U.S. Signatory and operating entity, . . . Comsat will acquire space segment capacity from Inmarsat and provide this capacity both to aeronautical customers and to U.S. service providers, which may operate their own aeronautical earth stations and resell Inmarsat space segment capacity to aeronautical customers."[15] As the Commission recognized, one benefit of "requiring Inmarsat aeronautical capacity to be accessed through the U.S. Signatory" was that "[t]he U.S. will not have to seek any amendments to . . . the Maritime Satellite Act."[16]

In a more recent proceeding, the Commission again explored the dimensions of COMSAT's statutory authority as U.S. Signatory to Inmarsat. The Commission reiterated that, "[b]y virtue of the [Inmarsat] Convention and the Maritime Satellite Act, COMSAT enjoys a statutory right to be the exclusive provider of Inmarsat

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Notice of Proposed Rulemaking, 2 FCC Rcd 1976, 1979 (1987); Report & Order, 4 FCC Rcd 6072, 6081 (1989) ("*Aeronautical Order*").

[14] *Aeronautical Order*, 4 FCC Rcd at 6082 ¶ 75.

[15] *Id.* at 6082-83 ¶ 76; *see also id.* at 6083 ¶ 78 ("As full-service providers, they would obtain the space segment portion of the service from Comsat, and may operate their own coast earth stations as they wish.").

[16] *Id.* at 6082 ¶ 75.

space segment to users in the U.S."[17]

MTN (at 7) notes that the Commission "has on more than one occasion expressly authorized U.S. carriers to utilize foreign LESs, particularly in the Indian Ocean Region where the Inmarsat satellite is incapable of accessing any U.S. earth stations." We acknowledged in our Petition (at 4) that COMSAT has not asserted a statutory right with regard to mobile-to-fixed services. We also explained (at 4 n.7) that COMSAT in certain limited circumstances has not opposed applications to provide fixed-to-mobile service through foreign LESs in the IOR, and explained the reasons therefor. The two decisions cited by MTN (at 7 n.6) are both such instances, and in each the Commission noted, without reaching the issue, that the Act may generally bar the use of foreign LESs to carry U.S.-originating traffic.[18] Moreover,

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[17] *Motorola Satellite Communications, Inc.*, 9 FCC Rcd 7693, 7695 (1994), *pet. for rev. dismissed sub nom. COMSAT Corp. v. FCC*, No. 95-1057 (D.C. Cir. Mar. 15, 1996). MTN (at 6 & n.3) seeks to turn this language on its head by implying that the term "users" is a reference to LES operators rather than to end users. However, both the normal meaning of that term and the precedent on which the statement is based make clear that COMSAT's right extends to provision of Inmarsat space segment to U.S. end users.

[18] *See Seven Seas*, 9 FCC Rcd at 1744 n.1; *IDB Mobile*, 8 FCC Rcd at 5616. The Commission has taken pains to make clear that these decisions are based on unique circumstances, and hence do not carry any precedential import. *See id.; see also IDB Aero-Nautical Communications, Inc.*, 6 FCC Rcd 5962, 5962 & n.5 (1991). These decisions thus have no bearing even on other applications for IOR service, much less on applications for fixed-to-mobile service in the AOR or POR, where U.S.-LESs can operate with the Inmarsat satellites. The *AT&T* decision addresses solely mobile-to-fixed service using U.S. LESs and COMSAT-provided space segment. *See AT&T*, 11 FCC Rcd at 5396 ¶¶ 3,6.

contrary to MTN's intimation (at 7), the Commission has never authorized carriage of U.S.-originating Inmarsat traffic through foreign LESs in any other ocean region.

The terms and legislative history of the Inmarsat Act, and the Commission's consistent, long-standing interpretation thereof, thus plainly require U.S. carriers to route U.S.-originating Inmarsat traffic through space segment supplied by COMSAT. In its Opposition, MTN has made clear that it intends to route U.S.-originating traffic through foreign LESs, contrary to this statutory requirement. The Commission should therefore reject or deny the MTN Application.[19]

Conclusion

For the reasons stated above and in our Petition, the Commission should reject or deny the MTN Application.

Respectfully submitted,

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COMSAT Mobile Communications

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July 17, 1997

[19] At a minimum, the Commission must condition any grant on use of LESs using COMSAT space segment for U.S.-originating traffic.

CERTIFICATE OF SERVICE

I, Neal T. Kilminster, hereby certify that I have this 17th day of July 1997 caused a true and correct copy of the foregoing Opposition of COMSAT Mobile Communications to be served, by first class mail, postage prepaid, on the parties listed below:

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