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December 22, 1998

BY HAND DELIVERY

Magalie Roman Salas
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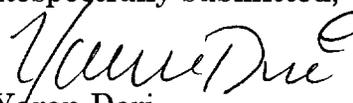
Dear Secretary Salas:

GE American Communications, Inc. ("GE Americom"), by its attorneys and pursuant to the paragraph 64 of the Commission's *Notice of Proposed Rulemaking* in IB Docket 98-192, released October 28, 1998 (FCC 98-280), hereby submits a copy of its comments on diskette in WordPerfect 5.1 for Windows format. The enclosed diskette is intended to accompany GE Americom's written comments, which were submitted to the Commission earlier today.

The enclosed diskette is in "read only" mode, and has been labeled pursuant to the Commission's instructions. Copies of this diskette are being provided to Kathleen A. Campbell of the International Bureau and to the Commission's copy contractor, International Transcription Services, Inc.

Kindly date-stamp the additional copy of this letter and return it to the awaiting messenger. Any questions concerning this submission should be addressed to the undersigned.

Respectfully submitted,


Yaron Dori

Enclosure

cc: Kathleen A. Campbell
ITS

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

DEC 22 1998

Direct Access to the
INTELSAT System

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IB Docket No. 98-192
File No. 60-SAT-ISP-97

COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.

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SUMMARY

GE Americom supports the Commission's tentative conclusion that direct access to INTELSAT is in the public interest. Level 3 direct access will increase competition in the satellite marketplace, give satellite providers incentives to operate more efficiently, diminish Comsat's ability to charge monopoly rates for INTELSAT space segment, and result in overall savings to both carriers and users.

The Commission has ample legal authority to permit Level 3 direct access in the United States. Nothing in the Satellite Act of 1962 or its legislative history requires that Comsat be the exclusive provider of access to INTELSAT. In addition, the fact that the Commission decided not to implement direct access in the past and has continued to permit Comsat to operate as the exclusive provider of INTELSAT space segment is in no way dispositive of whether the Commission is authorized to permit direct access to the INTELSAT system.

Implementing Level 3 direct access will create a competitive environment of benefit to both carriers and users. Specifically, by enabling carriers to obtain space segment directly from INTELSAT, direct access will expand user choice, place downward pressure on prices, and encourage growth and innovation in the provision of satellite services.

Comsat should not be permitted to charge direct access users a fee for any alleged costs associated with its official Signatory functions. Permitting Comsat to collect such a fee would be completely unjustified, and would detract

from the pro-competitive benefits of direct access by forcing carriers to subsidize costs that Comsat is capable of recovering on its own.

Finally, implementation of Level 3 direct access should not undercut privatization efforts concerning INTELSAT. INTELSAT's structure and its ability to thwart competition pose a serious threat to the U.S. satellite market. There is no reason to delay the implementation of direct access. However, in order to prevent INTELSAT from receiving an undue competitive advantage once direct access is implemented, INTELSAT must be barred from accessing the U.S. domestic market until pro-competitive privatization of INTELSAT is complete.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	IB Docket No. 98-192
Direct Access to the)	File No. 60-SAT-ISP-97
INTELSAT System)	

COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding. 1/ As explained in further detail below, GE Americom strongly supports the Commission's proposal that carriers and users be permitted to obtain Level 3 direct access to the INTELSAT system. More specifically, GE Americom believes that Level 3 direct access should be implemented immediately so that the benefits of direct access can accrue to carriers and users of satellite services as soon as practicable.

INTRODUCTION

The Commission has been examining the possibility of permitting direct access to the INTELSAT system for more than a decade. 2/ Although the

1/ *In the Matter of Direct Access to INTELSAT System*, IB Docket No. 98-192, File No. 60-SAT-ISP-97, *Notice of Proposed Rulemaking*, FCC 98-280 (rel. Oct. 28, 1998) ("NPRM").

2/ *See, e.g., In the Matter of Regulatory Policies Governing Direct Access to INTELSAT Space Segment for the U.S. International Service Carriers*, CC Docket No. 82-548, *Notice of Inquiry*, 90 FCC 2d 1446 (1982).

Commission previously declined to implement direct access, the *NPRM* tentatively concludes that direct access is in the public interest and would have pro-competitive effects in the marketplace for satellite-based communications services. *NPRM* at ¶ 5.

Today, ninety-three countries permit some form of direct access to INTELSAT's system, and non-signatory investment has become a significant portion of INTELSAT's ownership structure. *Id.* at ¶ 10. In addition, Congress has been considering the issue of direct access in connection with proposed satellite legislation. ^{3/} It is against this backdrop that the Commission is now appropriately considering eliminating Comsat's artificial monopoly on access to INTELSAT by implementing a direct access system.

As explained more fully below, the Commission has ample legal authority to permit Level 3 direct access in the United States. ^{4/} Moreover, if properly implemented, Level 3 direct access will increase competition in the satellite marketplace, give satellite providers incentives to operate more efficiently,

^{3/} *NPRM* at ¶ 4 (citing H.R. 1872, a bill with direct access provisions that was passed by the House of Representatives on May 13, 1998, and S.1328 and S.2365, two bills with direct access mandates that were introduced in the Senate in the 105th Congress).

^{4/} Level 3 direct access permits customers to enter into a contractual agreement with INTELSAT for ordering, receiving and paying for INTELSAT space segment capacity at the same rate that INTELSAT charges its Signatories. *Id.* at ¶ 8. Unlike Level 4 direct access, Level 3 direct access does not permit customers to make capital investments in the INTELSAT system. *Id.* at ¶ 9.

diminish Comsat's ability to charge monopoly rates for INTELSAT space segment, and result in overall savings to both carriers and users.

Permitting carriers and users to access INTELSAT directly will help minimize the harmful effects of Comsat's current monopoly with respect to INTELSAT capacity. However, additional fundamental reform of INTELSAT is also necessary. GE Americom therefore urges the Commission to continue to pursue pro-competitive privatization of INTELSAT so that a fully competitive market for satellite-based communications services can be realized. Pending such reform, INTELSAT must continue to be prohibited from providing U.S. domestic satellite services.

**I. THE COMMISSION HAS AUTHORITY TO IMPLEMENT
LEVEL 3 DIRECT ACCESS IN THE UNITED STATES**

[RESPONSIVE TO *NPRM* ¶¶ 16-43]

The *NPRM* correctly concludes that the Commission has all necessary authority to adopt Level 3 direct access. *Id.* at ¶ 19. Under the Communications Satellite Act of 1962 ("Satellite Act"), the Commission is expected to direct satellite policy in a manner that will "maintain and strengthen competition in the provision of communications services to the public." 47 U.S.C. § 701(c). The Satellite Act also requires the Commission to ensure that its satellite policies direct "care and attention . . . toward providing services to less developed countries as well as those more highly developed." *Id.* at § 701(b). One of the ways in which the Commission is expected to achieve these goals is by requiring all authorized users to have

“nondiscriminatory access” to INTELSAT so “that maximum competition [is] maintained in the provision of equipment and services utilized by the system.” *Id.* at § 701(c).

As indicated in the *NPRM*, the Commission has tentatively concluded that the best way to promote competition and cost savings in markets where Comsat is now dominant is to permit U.S. carriers and users to obtain Level 3 direct access to INTELSAT. *NPRM* at ¶ 30. GE Americom supports this conclusion wholeheartedly. As explained in further detail below, allowing direct access will enable carriers to obtain space segment from INTELSAT independent of Comsat, thereby expanding user choice, facilitating competition, and encouraging growth and innovation in the provision of satellite services. *Id.*

Nothing in the Satellite Act requires that Comsat be the exclusive provider of access to INTELSAT. *Id.* at ¶ 25. As indicated in the *NPRM*, the Satellite Act accords the Commission, not Comsat, the power to ensure “nondiscriminatory” and “equitable” access to INTELSAT. *Id.* The Satellite Act further authorizes the Commission to regulate “the manner in which available facilities of the [INTELSAT] system . . . are allocated among [its] users.” 47 U.S.C. § 721(c)(2). This broad delegation of authority empowers the Commission to exercise considerable discretion in determining how carriers and users access INTELSAT and authorizes the Commission to implement a Level 3 direct access system. *See NPRM* at ¶ 26.

Similarly, nothing in the legislative history of the Satellite Act

suggests that Congress intended Comsat to be the only holder of INTELSAT space segment or be its sole distributor indefinitely. ^{5/} If anything, Comsat became the sole U.S. Signatory to INTELSAT because it was presumed at the time that “as a practical matter there probably can be only one system of commercial satellites.”^{6/} This, of course, has proven over time to be untrue. As discussed in the *NPRM*, the notion that Congress did not intend to restrict U.S. carrier access to INTELSAT is supported by the fact that when Congress appointed Comsat as the exclusive provider of Inmarsat space segment in 1978, it designated Comsat “as the *sole operating entity* of the United States . . . for the purpose of providing international maritime satellite telecommunications services.” ^{7/} Had Congress intended Comsat to be the sole provider of INTELSAT space segment, it would have indicated as much in the plain language of the Satellite Act -- just as it did with respect to Inmarsat.

^{5/} See Report of the Committee on Foreign Relations to accompany H.R. 11040, “Communications Satellite Act of 1962,” Senate, 87th Congress, 2d Sess., Report No. 1873, dated Aug. 10, 1962; Report of the Committee on Commerce to accompany S. 2814, “Communications Satellite Act of 1962,” Senate, 87th Congress, 2d Sess., Report No. 1584, dated June 11, 1962; Report of the Committee on Interstate and Foreign Commerce to accompany H.R. 11040, “Communications Satellite Act of 1962,” House of Representatives, 87th Congress, 2d Sess., Report No. 1636, dated Apr. 24, 1962; Report of the Committee on Aeronautical Space and Sciences, “Communications Satellite Act of 1962,” Senate, 87th Congress, 2d Sess., Report No. 1319, dated Apr. 2, 1962 (“*Report of the Committee on Aeronautical Space and Sciences*”).

^{6/} *Report of the Committee on Aeronautical Space and Sciences* at 5.

^{7/} 47 U.S.C. § 752(a)(1) (emphasis added); see also H.R. Rep. 95-1134, Part 1, 95th Cong. 2d Sess. 15 (1978); H.R. Rep. No. 95-1134, Part II, 95th Cong., 2d Sess. 12 (1978); S. Rep. No. 95-1036, 95th Cong., 2d Sess. 20 (1978).

The fact that the Commission decided not to implement direct access over a decade ago and has continued to permit Comsat to operate as the exclusive provider of INTELSAT space segment is in no way dispositive of whether the Commission is now authorized to permit direct access to the INTELSAT system. In 1984, the Commission opted to forego implementing direct access after concluding that the two types of direct access it was considering would result in little savings to end users and would not be in the public interest. ^{8/} The Commission indicated, however, that it would be open to reconsidering the direct access issue in the future should the alternative measures it was pursuing prove to be ineffective. ^{9/} The Commission did not address its legal authority to require direct access in that proceeding, and nothing in the D.C. Circuit decision affirming the Commission's *1984 Report and Order* suggests that the Commission would not have had the authority to impose direct access had it found policy grounds to do so. *See id.* at ¶ 18.

In the past, Comsat has cited to Commission decisions affirming Comsat's monopoly on U.S. international space segment as proof that direct access cannot be implemented. ^{10/} As explained in the *NPRM*, however, these decisions

^{8/} See *In the Matter of Regulatory Policies Concerning Direct Access to INTELSAT Space Segment for the U.S. International Service Carriers*, CC Docket No. 82-548, *Report and Order*, 97 FCC 2d 296, 310, ¶ 32 (1984) ("*1984 Report and Order*"), *aff'd*, *Western Union Int'l, Inc. v. Fed. Communications Comm'n*, 814 F.2d 1280 (D.C. Cir. 1986).

^{9/} *1984 Report and Order* at 298, 326.

^{10/} See *NPRM* at ¶¶ 27-28 (citations omitted).

merely restate existing policy, and, in any event, do not address squarely the question of whether the FCC is authorized to implement direct access. *See id.* at ¶¶ 27-28. Their value in resolving the issue presented in this proceeding is therefore limited. Similarly, Comsat's prior claim that implementing direct access will somehow constitute a "taking" in violation of the Fifth Amendment is also a non-starter. As explained by the Commission in its *NPRM*, Comsat's interest in INTELSAT does not rise to the level of a property right, and, accordingly, it cannot be "taken" by the Commission through the implementation of a Level 3 direct access system. *See id.* at ¶¶ 31-42.

II. IMMEDIATE IMPLEMENTATION OF DIRECT ACCESS IS IN THE PUBLIC INTEREST

[RESPONSIVE TO *NPRM* ¶¶ 44-46, 51-55]

By implementing Level 3 direct access to INTELSAT space segment, the Commission will be facilitating a competitive environment of significant benefit to U.S. carriers and users. Based on its experience in other countries, INTELSAT has found that direct access (1) improves responsiveness to customer inquiries on service implementation; (2) avoids price mark-ups, (3) generates greater control over service quality, performance costs, connectivity, redundancy and earth station capability; and (4) creates more flexibility in tailoring services in terms of bandwidth, time duration, performance standards, redundancy and service

applications. 11/ By adopting direct access here, the Commission will be ensuring that these benefits accrue to carriers and users of satellite-based communications services, enabling them to compete more effectively in the global marketplace.

As indicated in Appendix B to the Commission's *NPRM*, Comsat's rates for access to INTELSAT are sometimes marked up by over *three hundred percent* before being offered to customers. 12/ Previous estimates by AT&T, MCI and WorldCom have indicated that Comsat's average margin over the INTELSAT Utilization Charge ("IUC") (the rate Signatories pay for the use of INTELSAT's space segment) is sixty-eight percent. 13/ These parties have calculated that by introducing competition into the market for access to INTELSAT space segment (*i.e.*, implementing direct access), the Commission can reduce this margin to thirty-five percent, resulting in a projected savings to carriers and consumers of more than \$1 billion over a ten year period. *Id.* at ¶ 45.

If Level 3 direct access is implemented, then carriers and users of satellite-based communications services will no longer have to go through Comsat to obtain INTELSAT space segment. This will enable heavy users of satellite-based services to access INTELSAT on their own, creating cost savings that will, in turn,

11/ See *id.* at ¶ 44 (citing "Accessing INTELSAT . . . Directly," reprinted in Record of Hearing before the Subcommittee on Telecommunications, Trade and Consumer Protection on H.R. 1872 at pp. 135-141).

12/ See *id.* at Appendix B (the rates in Appendix B predate the Commission's designation of Comsat as non-dominant in certain markets).

13/ *Id.* at ¶ 45 (citing Satellite Users' Coalition, "Analysis of Privatization of Intergovernmental Satellite Organizations Proposed in H.R. 1872," filed by AT&T in IB Docket No. 98-60 on Mar. 16, 1998, at p. 17 and 23-24).

be passed through to consumers. In addition, direct access will enable a number of companies to market INTELSAT space segment to all satellite users. This, in turn, will generate a competitive environment of multiple space segment providers, creating more options for users and placing downward pressure on prices.

GE Americom has experienced the benefits of direct access first hand. GE Americom's affiliate, GE Capital Spacenet Services-Europe ("Spacenet-Europe"), purchases space segment directly from INTELSAT in Germany. Prior to the availability of direct access, Spacenet-Europe paid approximately a 12% mark up over INTELSAT's rates. However, with the implementation of direct access, that mark up has been eliminated. In addition, Spacenet-Europe has found that INTELSAT's sales force is very responsive and keeps direct access customers well-informed regarding the availability of INTELSAT space segment.

In the past, Comsat has claimed that the competitive environment created by direct access will cause it to lose its economies of scale.^{14/} This, according to Comsat, will increase its costs, requiring it to raise prices in a manner that will be harmful to low volume users. *See Green-Brattle/PR Study* at pp. 43-44. What Comsat fails to recognize, however, is that direct access will spawn numerous potential providers of INTELSAT space segment to these same low volume users.

^{14/} See Comsat Corporation, "An Economic Evaluation of Direct Access to the INTELSAT System by U.S. Telecommunications Customers," by Professor Jerry R. Green, Harvard University, and Brattle/PR, dated October 1995 and submitted by letter from Howard D. Polsky, Comsat Corporation to Secretary, Fed. Communications Comm'n, dated Mar. 17, 1998 ("*Green-Brattle/PR Study*") at pp. 43-44.

Competition, in turn, will drive down prices and promote operational efficiency.

Comsat's loss of its economies of scale will therefore not impact low volume users.

If anything, the fallout from direct access will merely force Comsat to operate more efficiently.

In its *1984 Report and Order*, the Commission concluded that the two types of direct access it was considering would not produce significant savings and related efficiencies for consumers. See *1984 Report and Order* at 318. As explained in the *NPRM*, however, the Commission at that time did not consider in its analysis the direct access possibilities that INTELSAT later put in place. *Id.* at ¶ 49. Level 3 direct access will permit non-Signatory carriers an opportunity to obtain service directly from INTELSAT without having to make a capital investment in the system. Non-Signatories will therefore be able to obtain direct access at lower costs than were contemplated in 1984. This, in turn, suggests that the conclusions reached by the Commission in its *1984 Report and Order* (*i.e.*, that direct access will not lower prices for consumers) are inapplicable to Level 3 direct access and need not be considered in this rulemaking.

III. COMSAT SHOULD NOT BE PERMITTED TO CHARGE A FEE TO DIRECT ACCESS USERS

[RESPONSIVE TO *NPRM* ¶¶ 47-50]

Any suggestion that Comsat should be permitted to charge all carriers a fee (if direct access is implemented) to recover costs associated with its "statutorily imposed official Signatory functions" is inappropriate and should be

rejected. *Id.* at ¶ 50. Permitting Comsat to charge such a fee would detract from the pro-competitive benefits of direct access by forcing carriers to subsidize costs that Comsat is capable of recovering on its own.

Comsat will likely claim that such a fee is needed for the same reasons that it now marks up INTELSAT's tariffed rates in the U.S. ^{15/} Comsat has indicated that its mark up is intended to recover operational expenses such as (1) Signatory costs; (2) marketing and sales costs; (3) satellite insurance costs; (4) transaction costs; (5) operational costs; (6) regulatory compliance costs; and (7) taxes. ^{16/} While the *NPRM* has placed the burden on Comsat to justify the magnitude of these costs, ^{17/} it is worth noting that the IUC already includes a generous rate of return. ^{18/} Comsat's reliance on IUC mark ups to generate profit is therefore likely to be the result of inefficiencies rather than significant expenses. These inefficiencies should not be imposed on other carriers.

Of the seven operational expenses cited by Comsat as justification for its prices, none warrants the type of mark up that Comsat claims it requires. In

^{15/} *NPRM* at ¶ 46 (citing Comsat's Consolidated Reply in the *Comsat Non-Dominant Proceeding*, IB Docket No. 98-60 at p. 49, n. 134).

^{16/} *Id.* at ¶ 47 (citing comments of Comsat Vice President of Federal Policy and Regulation Howard D. Polsky at Comsat Press Conference, Feb. 4, 1998).

^{17/} *See id.* ("We request that Comsat specify the activities or transactions that give rise to these costs and the magnitude of these costs").

^{18/} INTELSAT's rate of return is established by its Board of Governors and is periodically reviewed. In 1997, the Board decided to establish a rate of return in the range of seventeen to twenty-one percent and to review the range annually. During 1997, the actual return on shareholder invested capital was approximately eighteen percent. *See id.* at ¶ 9, n. 23.

fact, these costs are typical of most carriers and do not require special treatment. There is also no reason for Comsat to assume that these costs will remain the same if and when direct access is implemented. Specifically, once carriers and users can access INTELSAT space segment without Comsat's assistance, Comsat's "transaction costs" and "operational costs" will diminish. Similarly, Comsat's "regulatory compliance costs" have decreased considerably in recent years due to the Commission's substantial deregulation of most of Comsat's services.

In addition, while direct access may prompt Comsat ultimately to shift more resources into its marketing and sales departments, thereby increasing its "marketing and sales costs," Comsat should not be permitted to recover those costs from carriers who do not select Comsat as their provider (*i.e.*, Comsat's direct access competitors). Like all commercial entities, Comsat should be responsible for funding its own marketing and sales expenditures. More importantly, carriers and users should not be denied direct access merely because it will force Comsat to rely on its own business savvy, rather than its monopoly status, to generate revenue.

IV. IMPLEMENTING DIRECT ACCESS SHOULD NOT UNDERCUT PRIVATIZATION EFFORTS CONCERNING INTELSAT

[RESPONSIVE TO *NPRM* ¶ 59]

INTELSAT's structure and its ability to thwart market competition pose a serious threat to the U.S. satellite industry. Congress and the Commission are therefore justified in their ongoing attempt to seek pro-competitive privatization of INTELSAT. While privatizing INTELSAT is of primary importance to

competition in the satellite-based communications market, there is no reason to believe that direct access will impede Congress's and the Commission's pursuit of that goal.

In the past, Comsat has claimed that implementing direct access in the United States will delay or undermine privatization efforts because U.S. carriers and users, having obtained lower prices for space segment, will be disinclined to support privatization plans. ^{19/} Nothing is further from the truth. The parties that have sought direct access in the past have been the most ardent supporters of INTELSAT privatization, and, if anything, they will continue to support this privatization effort in light of the tremendous competitive benefits it will bring. Comsat's argument that implementing direct access will delay the larger goal of privatization is therefore a red herring that is intended only to stifle competition and should be rejected.

During the period in which privatization is pending, INTELSAT should not be permitted access to the U.S. domestic market. Permitting INTELSAT access to the U.S. domestic market before privatization reform takes place will give INTELSAT an undue competitive advantage in the marketplace for such services and irreparably harm competitive carriers. Thus, even after direct access is

^{19/} See *id.* at ¶ 59 (citing Comsat Corporation, Joint Response to the Satellite Users' Coalition, "Analysis of the Privatization of the Intergovernmental Satellite Organizations Proposed in H.R. 1872 and S. 1382," dated Mar. 9, 1998, submitted by letter from Howard D. Polsky, Comsat Corporation to Secretary, Fed. Communications Comm'n, dated Mar. 17, 1998, at p. 13).

implemented, INTELSAT should be barred from accessing the U.S. domestic market until a pro-competitive privatization is completed.

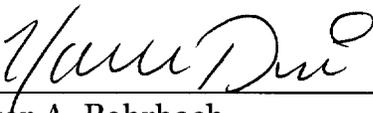
CONCLUSION

GE Americom supports fully the Commission's proposal to implement Level 3 direct access to the INTELSAT system, and requests that, for the reasons stated above, such access be made available to carriers and users immediately.

Respectfully submitted,

GE AMERICAN COMMUNICATIONS, INC.

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December 22, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of GE American Communications, Inc. was served by hand delivery this 22nd day of December 1998 to:

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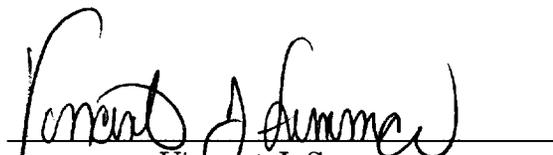
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