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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

In the Matter of )  
 )  
Direct Access to the ) IB Docket No. 98-102  
INTELSAT System ) File No. 60-SAT-ISP-97  
 )  
To: The Commission

**EXECUTIVE SUMMARY**

of the

**COMMENTS OF COMSAT CORPORATION**

Richard E. Wiley  
Lawrence W. Secrest, III  
Rosemary C. Harold  
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December 22, 1998

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## EXECUTIVE SUMMARY

Commission imposition of its proposal for “Level 3” direct access would (1) exceed the FCC’s authority under the Communications Satellite Act of 1962, (2) constitute a “taking” of COMSAT’s property without compensation and breach the regulatory contract between the corporation and the United States, and (3) be an arbitrary and capricious action that would harm competition and put at risk the full privatization of INTELSAT.<sup>1</sup> The facts supporting these conclusions are summarized below.

**I. The Language, Structure, and Context of the Satellite Act Make It Unmistakably Clear that Congress Intended to Give COMSAT the Exclusive Franchise to Provide INTELSAT Services in the United States.**

The statute admits of only one reasonable interpretation: Congress vested COMSAT with the exclusive U.S. franchise to access the global communications satellite system that become INTELSAT. The Act expressly grants only COMSAT the authority to “own” and “operate” this satellite system and to “furnish, for hire, channels of communication” to carriers and other users of that system.<sup>2</sup> Congress also erected an extensive statutory scheme of structural and regulatory safeguards to prevent COMSAT or other carriers from exploiting the corporation’s exclusive service franchise to the detriment of competition in the U.S.

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<sup>1</sup> See *Direct Access to the INTELSAT System*, IB Docket No. 98-192, File No. 60-SAT-ISP-97, FCC 98-280, ¶ 15 (rel. Oct. 28, 1998) (Notice of Proposed Rulemaking) (“*Notice*”) (calling for comment on “implementing Level 3 contractual direct access”). The *Notice* envisions that U.S. customers would deal directly with INTELSAT to obtain capacity. *Id.* at ¶ 8. While these customers would place their orders with and make utilization payments directly to INTELSAT, COMSAT would remain liable for satisfying U.S. investment and other treaty obligations to the intergovernmental satellite organization.

<sup>2</sup> 47 U.S.C. § 735(a)(1-2).

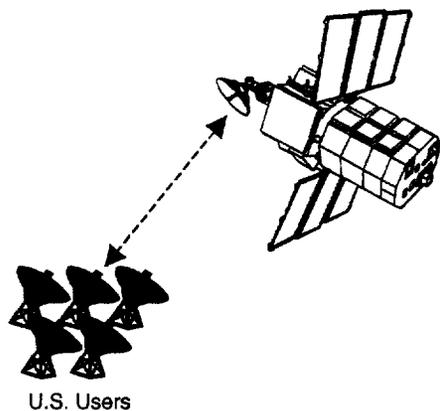
international communications market. Moreover, the Satellite Act's consistent recognition of COMSAT as the designated U.S. participant and service provider stands in marked contrast to statutory sections that explicitly provide for multi-carrier roles with respect to other aspects of the system, including earth station operations. This plain, contextual reading of the Act is borne out by the fact that—in spite of monumental differences as to many other issues under consideration—*every* participant in the year-long debate on the Act recognized that the new U.S. satellite entity was to be granted an exclusive franchise over access to the system.

## **II. The Statutory Background and History Explicitly Confirm Lawmakers' Grant of the Exclusive Service Franchise on COMSAT.**

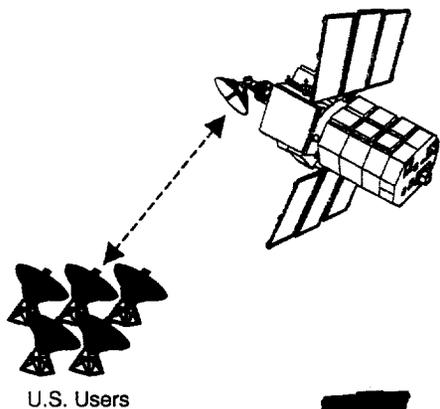
The statutory record demonstrates that lawmakers expected and desired that the new entity would have an exclusive franchise over the provision of INTELSAT services. Indeed, this understanding permeated Congress' conception of the proposed alternatives as well. Figure 1 provides an overview of the basic options that lawmakers considered—a carrier consortium, a new government agency, or a unique private corporation—and their reasons for rejecting the other proposals in favor of the creation of COMSAT.

Lawmakers intended that that one entity, whatever its organizational form, would act as the sole service provider—and the safeguards Congress devised to ensure that all eligible U.S. users could obtain transmission capacity on equitable terms only make sense when it is recognized that there is to be only one U.S. provider of the global system's satellite services. Perhaps the best articulation of this common understanding came from the then-chairman of the Federal Communications Commission. Approximately one week before passage of the Satellite Act, Newton Minow testified before the lawmakers that

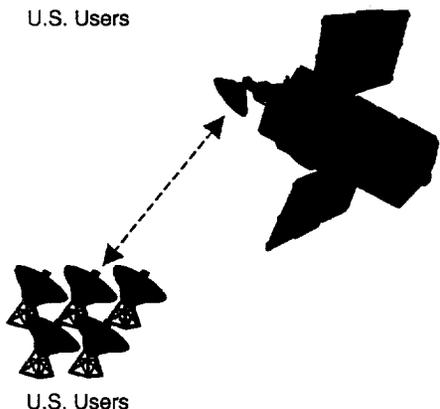
# 1962: Congress Considered Three Options for the World's First Satellite System — All Involving an Exclusive Service Franchise



- Sole service provider for U.S. users
- Carriers own U.S. portion
- Fear of AT&T domination
- Fear of discrimination against users who are not consortium members



- Sole service provider for U.S. users
- Government owns U.S. portion
- Fear of cost to U.S. Treasury
- Fear of delay in establishing system



## • COMSAT

- Sole service provider for U.S. users
- Shareholders own U.S. portion
- “Carrier’s carrier” role guarantees equitable provision of service to all users
- Private funding guarantees quick launch and efficient operation of system

Figure 1

[i]t is important to remember that in this respect the satellite corporation is a common carrier's common carrier. It will make available its relay facilities—the satellite and any ground terminals which it operates—to the international carriers, both foreign and United States.... To communicate by satellite, the foreign entity must have a ground station and must obtain capacity in the satellite facilities. The U.S. carrier must also obtain capacity in the satellite system. *Such capacity must be obtained, of course, from the satellite corporation.*<sup>3</sup>

Similarly, in a letter to then-Senate Majority Leader Mike Mansfield incorporated into the same hearing, the FCC Chairman explained that “the market to be served by the corporation consists of the carriers who will use its facilities. The market to be served by the carriers will be the senders and recipients of communications traffic. *The corporation will depend upon the carriers for its revenues; the carriers will depend upon the corporation for facilities.*”<sup>4</sup>

**III. For Almost Four Decades, the Commission and the Courts Have Consistently Recognized that the Act Establishes COMSAT As the Sole U.S. Entity Authorized to Provide INTELSAT-Based Services to U.S. Customers.**

Within the first decade after enactment of the Satellite Act, the FCC repeatedly recognized COMSAT's exclusive service franchise in decisions exercising its regulatory authority over the corporation. For instance, the Commission noted in 1966 that it “is not given authority to license any other U.S. carrier to operate the space segment.... Instead, such carriers must procure the space segment facilities from COMSAT.”<sup>5</sup> The agency similarly

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<sup>3</sup> Communications Satellite Act of 1962: Hearing on H.R. 11040 before the Committee on Foreign Relations, 87th Cong., 2nd Sess. 20 (Aug. 10, 1962) (emphasis added).

<sup>4</sup> *Id.* at 27 (Aug. 10, 1962) (quoting Letter of Newton Minow to Sen. Mike Mansfield, Senate Majority Leader).

<sup>5</sup> *In re Authorized Entities and Authorized Users Under the Communication Satellite Act of 1962*, 4 F.C.C.2d 421, 438 (1966).

recognized in 1970 that “*there is no doubt* that the [A]ct provides that the corporation is the chosen instrument to provide space segment facilities to licensees of earth stations in the United States. That conclusion follows from a reading of Section 305 with other sections of the [A]ct.”<sup>6</sup>

Courts also have acknowledged the common sense, plain language reading of the Satellite Act as mandating COMSAT’s exclusive access to the INTELSAT system. In 1984 the D.C. Circuit described COMSAT as “the U.S. representative to INTELSAT and the sole U.S. entity permitted access to the system.”<sup>7</sup> The Southern District of New York in 1990 similarly found that “Congress intended to establish through a global system, a single provider of international satellite services to and from the United States,” and that “Congress established COMSAT as a government-created monopoly.”<sup>8</sup> On an appeal in that case, the Second Circuit in 1991 noted that Congress had made COMSAT “the sole provider of access to the global satellite system to U.S. communications carriers.”<sup>9</sup>

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<sup>6</sup> *Establishment of Regulatory Policies Relating to the Authorization Under Section 214 of the Communications Act of 1934 of Satellite Facilities for the Handling of Transiting Traffic*, 23 F.C.C.2d 9, 12 (1970) (emphasis added).

<sup>7</sup> *National Association of Broadcasters v. FCC*, 740 F.2d 1190, 1214 (D.C. Cir. 1984).

<sup>8</sup> *Alpha Lyracom Space Communications, Inc.*, 1990-2 Trade Cas. (CCH) ¶ 69, 188 (S.D.N.Y. Sept. 30, 1990) (citing S. Rep. No. 1584, 87th Cong. 2d Sess. 28, 30 (1962)).

<sup>9</sup> 946 F.2d at 175.

**IV. Enactment of the Inmarsat Act of 1978 Provided Further Congressional Recognition of COMSAT's Exclusive Franchise to the INTELSAT System.**

The Commission acknowledges that the Inmarsat Act grants COMSAT the exclusive service franchise with respect to that satellite system. Yet the agency contends that certain small differences in wording between that statute and the 1962 Satellite Act indicate that the older Act did not similarly vest COMSAT with an exclusive right of access to the INTELSAT system. This reading is incorrect. The similarities between the two acts are striking: While the Inmarsat Act designates COMSAT as the "sole operating entity of the United States for participation in Inmarsat," the Satellite Act provides that "United States participation in the global system shall be in the form of a private corporation." Thus, both statutes specify that participation is to be by a single entity—COMSAT. It is hard to see how one more readily establishes an exclusive franchise than the other.

Clearly, Congress intended to pattern the Inmarsat Act on the Satellite Act, not to depart from it in fundamental ways. The legislative history of the Inmarsat Act establishes this fact already. In particular, that history bolsters the conclusion that Congress intended in 1962 to grant COMSAT exclusive access to what would become the INTELSAT system—and understood in 1978, in replicating that scheme with respect to Inmarsat, that it had done so. In any event, there is no evidence whatsoever that the framers of the 1978 Inmarsat Act thought they were giving COMSAT a broader mandate from the one they had provided to the company through the 1962 Satellite Act. Indeed, if Congress had been deciding anew to grant COMSAT sole access to Inmarsat in 1978 but had adopted only non-exclusive access under the 1962 Act, such a "take-back" of direct access certainly would have been prominent in the debates. Of course, just the opposite is true.

**V. Implementing the Level 3 Direct Access Proposal Would Expose the U.S. Government to an Obligation to Compensate COMSAT for the “Taking” of Its Property Without Just Compensation and Violation of the “Regulatory Contract” Between the Corporation and the Government.**

As detailed in the Opinion of Law accompanying COMSAT’s Comments in this proceeding, a Commission order for Level 3 direct access to INTELSAT would invade COMSAT’s property rights, subjecting the U.S. government to liability for at least three reasons:

- Level 3 direct access would breach the regulatory contract established between the U.S. government and COMSAT in 1962.
- Because Level 3 direct access would destroy COMSAT’s legitimate, investment-backed expectations, it would constitute a regulatory taking, in violation of the Fifth Amendment’s Takings Clause.
- Level 3 direct access would constitute a permanent physical invasion of COMSAT’s property and, as such, would be a per se taking of COMSAT’s property.

Under each of these three theories, COMSAT would have a claim against the United States for COMSAT’s expectation damages. To adequately compensate COMSAT for the taking of its property—which the current proposal fails to do—the FCC would have to adopt an access pricing rule that would ensure COMSAT’s recovery of its cost of forgoing sales, in a competitive marketplace, of INTELSAT space segment capacity to U.S. carriers and users.

**VI. Authorizing a Level 3 Direct Access Regime Would Be Impossible to Reconcile in Any Principled Way With the Reasons Previously Relied upon by the Commission for Rejecting the Same Direct Access Proposal in 1984.**

Even if the Commission had the authority to implement its direct access proposal, no economic, policy, or factual basis exists for reversing its 1984 determination that Level 3-type direct access would not serve the public interest. The reasons that justified the agency’s decision 14 years ago are still valid. Indeed, the “adverse consequences” which weighed

against direct access then are far more substantial today. Figure 2 provides an overview of the FCC's 1984 conclusions and the facts which led the agency to recognize that (1) the INTELSAT utilization charge ("IUC") fails to measure COMSAT's true cost of providing INTELSAT capacity, (2) the IUC does not provide COMSAT with a full return on investment that shareholders deserve, (3) Level 3 direct access would not foster gains in efficiency or cost savings, and (4) Level 3 direct access would not deliver savings to end users.

**VII. The FCC's Proposal Fails to Address the Real Threat that Level 3 Direct Access Poses for the Successful Completion of U.S. Goals for INTELSAT Privatization.**

One factor that was not part of the agency's public interest calculus in 1984 is the impending privatization of INTELSAT. The Clinton Administration is already on record as stating that "[i]f we can be successful in implementing privatization at INTELSAT, there is little reason to be distracted by introducing new access regimes."<sup>10</sup> Substantial steps in that direction already have been achieved. The six-satellite New Skies, N.V., has been spun off as a fully private corporation located in the Netherlands (a WTO member country), and the member nations of INTELSAT have elected a new Director General who ran on a platform with a firm pro-privatization agenda.

But allowing INTELSAT to access the U.S. market "directly" at this time could slow down or derail the privatization process. The admission of foreign INTELSAT Signatories to the U.S. market at this critical juncture would have the perverse effect of giving these Signatories strong incentives to maintain the current intergovernmental structure of

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<sup>10</sup> Testimony of Jack A. Gleason, National Telecommunications and Information Administration, before the U.S. House of Representatives Subcommittee on Telecommunications on H.R. 1872 (Sept. 30, 1997).

## ***FCC Reasons for Rejecting “Direct Access”***

<b><i>Reasons</i></b>	<b><i>1984 Facts</i></b>	<b><i>1998 Facts</i></b>
<b>The IUC is not a measure of COMSAT’s cost of providing INTELSAT capacity.</b>	FCC recognized that the IUC was a function of INTELSAT’s “unique financial structure” and was not designed to cover all of COMSAT’s valid costs.	Nothing has changed.
<b>The IUC does not provide COMSAT a full return on its INTELSAT investment.</b>	FCC recognized that COMSAT was entitled to a fair return on investment—and that its return was to be derived from providing space segment.	Nothing has changed.
<b>Direct access would not provide gains in cost savings or efficiency.</b>	FCC recognized that direct access was a poor substitute for the genuine market forces brought about by facilities-based competition.	Capacity available on competing facilities has boomed, and prices have dropped as service options have increased.
<b>Direct access would not deliver savings for end users.</b>	FCC recognized that even if some savings could result, there would be no guarantee that carriers would pass any savings through to end users.	Nothing has changed.
<b>Allowing INTELSAT to access the U.S. market directly would threaten the pending privatization of the IGO.</b>	(INTELSAT privatization not considered)	Permitting tax-exempt IGO to enter before privatization would give foreign investors in INTELSAT incentives to derail reform in order to preserve the competitive advantages of avoiding U.S. taxes.

*Figure 2*

INTELSAT and to oppose further privatization. At the same time, the strong, coherent leadership that COMSAT has exerted in driving INTELSAT toward a fully competitive privatization would be transformed into balkanized conflicting interests. The FCC's direct access proposal thus is at odds with declared U.S. policy goals.

Moreover, allowing INTELSAT to enter the U.S. market directly while it is still immune from suit, taxation, and customs duties would, according to FCC precedent, distort competition in harmful ways. The Commission has held that even COMSAT's limited Signatory immunity provides a competitive advantage that precludes it from being allowed to provide U.S. domestic services on the INTELSAT system.<sup>11</sup> Under these circumstances, it would be truly anomalous (not to say arbitrary and capricious) for the Commission to allow INTELSAT to enter the U.S. market directly when it has far broader immunities than COMSAT.

**VIII. The Commission Lacks New Facts that Would Be Needed to Justify Adoption of Level 3 Direct Access—and Instead Must Confront Its Own Previous Findings and Current Marketplace Facts to the Contrary.**

Another factor that was absent from the agency's public interest calculus in 1984 was the presence of numerous alternative facilities-based providers of international transmission capacity. As the FCC is well aware, this type of competition is far superior from a competition standpoint, to the mere resale of the system capacity of one supplier (here,

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<sup>11</sup> *In the Matter of Amendment of the commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Services in the United States*, Report and Order, 12 FCC Rcd 24094 (1997) ("DISCO II Order"). Of course, COMSAT continues to be of the view that the limited privileges and immunities that it holds do not have a material adverse effect on competition.

INTELSAT, as would be the case under a direct access regime). Indeed, as Figure 3 recounts, the Commission has taken numerous steps since 1984 to help promote vigorous facilities-based competition—and those efforts have been highly effective. Figures 4 and 5 provide a comparison of the broadband facilities available to users in 1984 and today. New communications technologies, like high-capacity undersea fiber optic cables, were not even introduced until 1988—yet now they connect the United States to 120 countries, with more links on the way. In addition, COMSAT and INTELSAT now face intense intramodal competition. Several other satellite firms that have launched their own “birds” over the last decade; the Hughes/PanAmSat fleet already surpasses INTELSAT in size.

In today’s market, either COMSAT’s satellite service prices are competitive or users switch providers. This is the outcome the Commission was seeking when it was considering direct access in 1984; the agency has succeeded in achieving that goal by other means and with better results. The agency ruled in the April 1997 *COMSAT Non-Dominance Order* that COMSAT faces effective competition for the vast majority of its services. COMSAT’s rates on these routes are by definition competitive and presumptively lawful. COMSAT’s already-outdated regulatory classification on the small and declining number of so-called “thin” routes cannot serve as a reasoned justification for implementing direct access even with respect to these markets, for the same market-driven rates offered on the competitive “thick” routes are offered on the thin routes as well. Thus, as a matter of both logic and law, there is no factual basis for the agency to contend that COMSAT could earn “monopoly rents,” and such concerns can form no basis for authorizing Level 3 direct access.

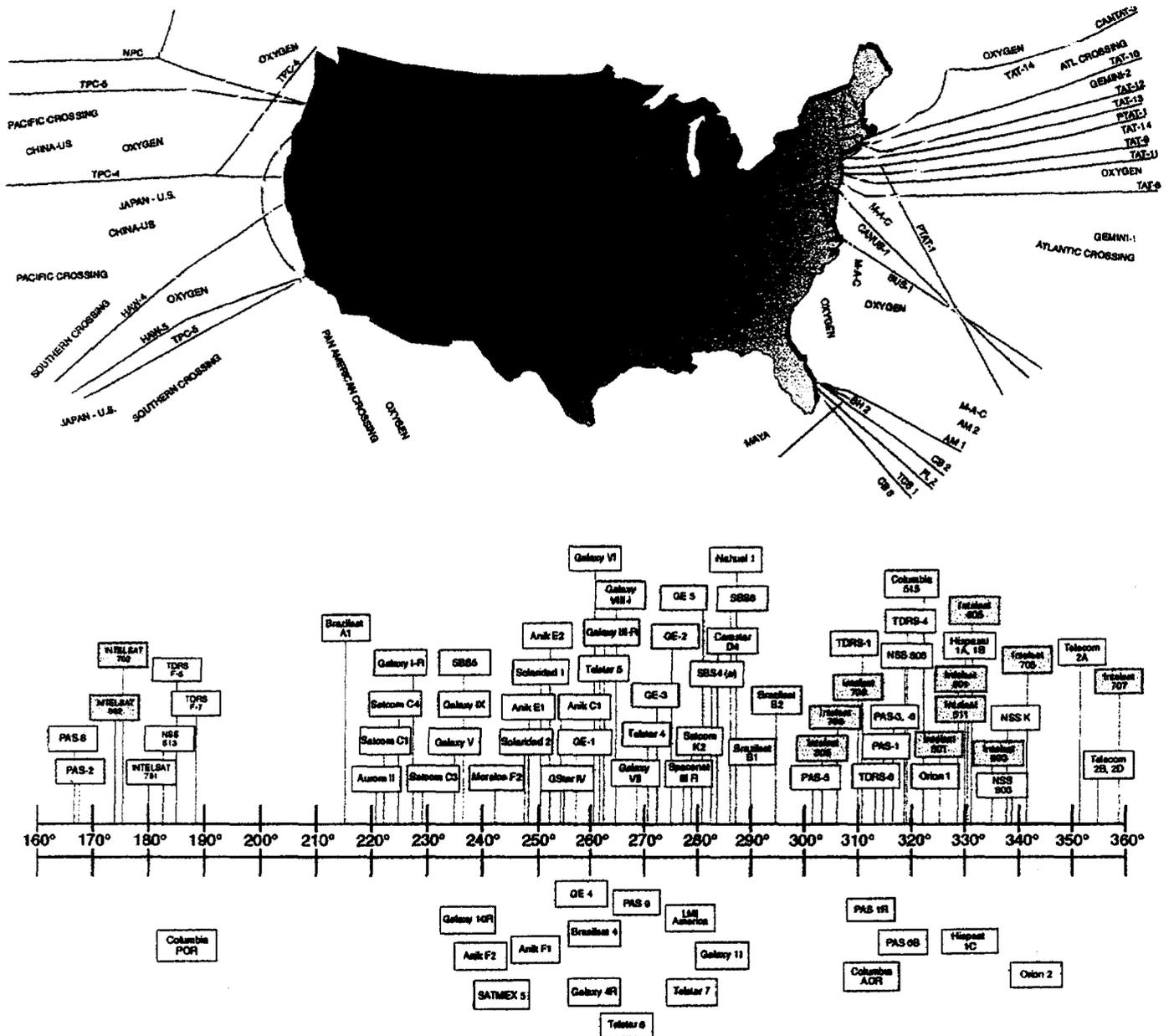
# ***Competitive Developments in International Telecommunications (1984 – 1998)***

- 
- FCC rejects direct access to INTELSAT—March 1984
  - Authorization of separate satellite systems—July 1985
  - Deployment of first transoceanic fiber-optic cables—July 1988
  - End of “balanced loading” guidelines—January 1989
  - Adoption of DISCO-I policy—January 1996
  - Reclassification of AT&T as a non-dominant international carrier—May 1996
  - End of PSTN restrictions on separate satellite systems—December 1996
  - Adoption of the WTO Agreement on Basic Telecommunications—February 1997
  - FCC Implementation of WTO Agreement—November 1997
  - Hughes-PanAmSat merger approved—April 1997
  - Loral-Orion merger approved—February 1998
  - Reclassification of COMSAT as a non-dominant international carrier—April 1998
  - Teleglobe-Excel merger approved—September 1998
  - MCI-WorldCom merger approved—September 1998
  - FCC reports fiber-optic cable capacity to triple by year-end 1999—September 1998
  - Spin-off of New Skies Satellites, N.V.—November 1998
  - AT&T/British Telecom joint venture announced—July 1998

*Figure 3*



# Access to International Fiber Cable and Satellite Facilities by U.S. Users (1998)



**SOURCES:** 1998 Satellite Industry Directory, FCC Applications, The Satellite Encyclopedia, SATCO DX, trade press, company press releases, webpages, KMI Corporation, and The Brattle Group

**LEGEND**  
 Operable by EOY 1998   
 Applied or under construction (Operable after 1998)

Figure 5

**IX. The Direct Access Policies of Foreign Nations Are Not Relevant Because they Involve Considerably Less Competitive Domestic Marketplaces Than That of the United States.**

Direct access in other countries is largely part of a cure for market structure problems that do not exist here. Figure 6 provides an overview of the critical differences between COMSAT as the U.S. Signatory and most foreign Signatories. Unlike its counterparts abroad, COMSAT is neither vertically integrated into retail services nor horizontally integrated by virtue of interests in alternative transmission facilities. For this reason, COMSAT's economic consultants at Harvard University and The Brattle Group identify the corporation as the only "pure play" investor among all INTELSAT Signatories. Moreover, unlike other nations, the United States is unusually well served by competing cable and satellite systems. Finally, it is obvious that Congress' statutory scheme for COMSAT accomplished almost 40 years ago what many foreign nations are struggling to achieve today: nondiscriminatory treatment of all users who seek to make use of the global system.

**X. Even if Level 3 Direct Access Could Theoretically Offer Some Savings Benefits, the Entire Cost of COMSAT's INTELSAT-Based Services Represents Only a Tiny Fraction of the Rates that Retail Carriers Charge to End Users—and the Carriers Would Likely Keep Any Possible Savings for Themselves.**

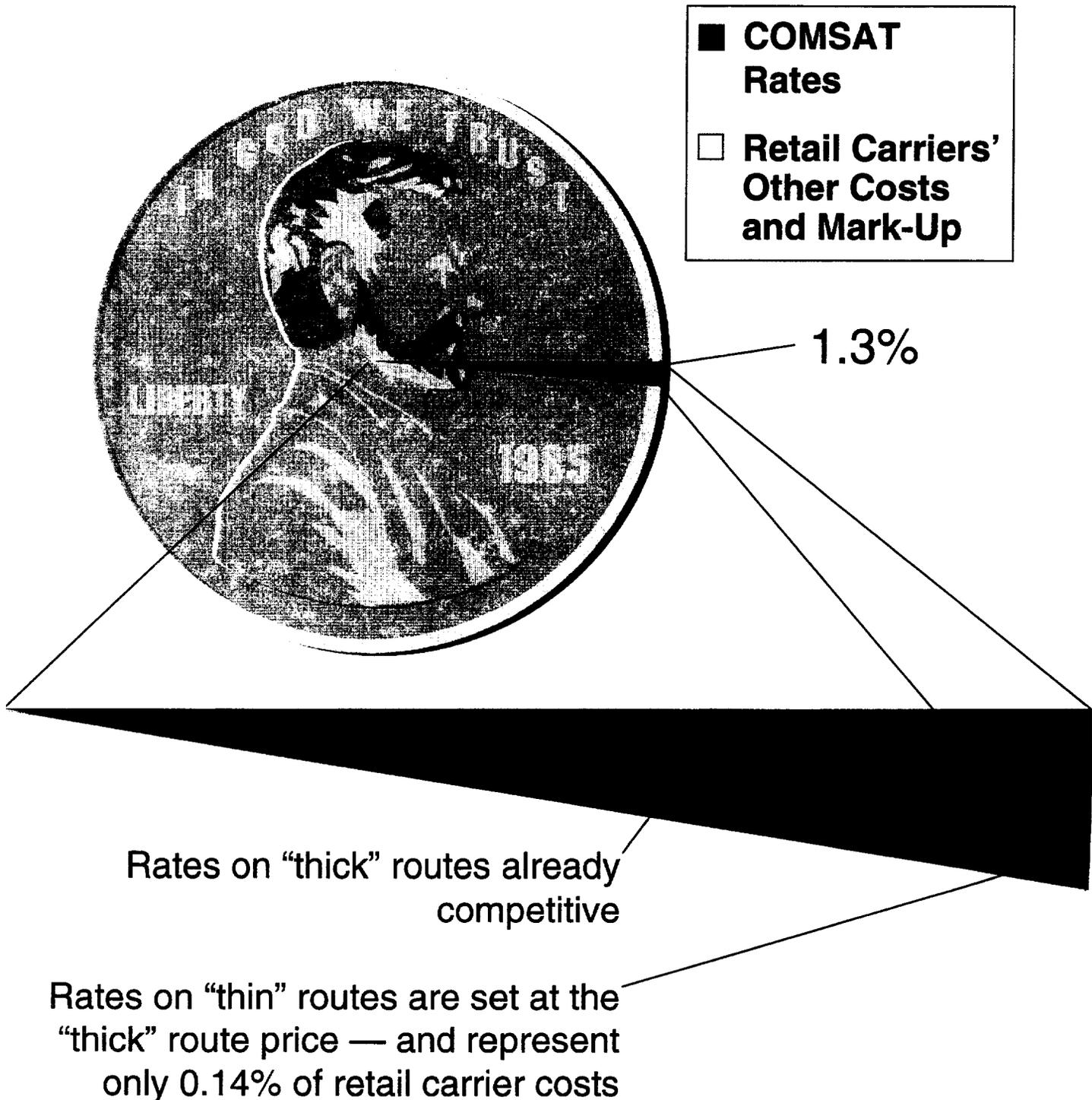
Even if the Commission's proposal for Level 3 direct access somehow could avoid creating the harms that COMSAT identifies in its comments, the benefits that direct access might bring to end users would be *de minimis* best. As the FCC first acknowledged in 1984, the cost of COMSAT-provided space segment accounts for only a small fraction of what U.S. end users pay for international carrier services. Figure 7 illustrates the actual cost that COMSAT's services represent in the rates that retail carriers charge to end users: a stunningly low 1.3%. Cost of COMSAT space segment for the thin routes is a nearly infinitesimal

# Role of COMSAT Compared to Other Signatories

	<b>COMSAT</b>	<b>Foreign Signatories</b>
<p><b>INTELSAT SATELLITES:</b> Signatories own and finance in proportion to their use.</p>	<p>Largest user, with 18% ownership</p>	<p>142 signatories. Only 3 signatories have an ownership share over 3%.</p>
<p><b>SPACE SEGMENT LINKS</b></p>	<p>Private company created to serve as the sole U.S. investor; required to finance system using private capital.</p> <p>As sole investor, given exclusive franchise to sell services in the U.S., but must provide nondiscriminatory access to all users.</p>	<p>Historically government-owned or financed companies (although many are now privatizing).</p> <p>No requirement to provide nondiscriminatory access.</p>
<p> <b>GROUND SEGMENT (Earth Stations)</b></p>	<p>Required by FCC to provide unbundled rates for space and ground segment.</p> <p>Other carriers and users can own and operate earth stations and are guaranteed access to INTELSAT space segment by COMSAT.</p>	<p> Typically, not required by national regulators to unbundle space and ground segment rates.</p> <p>Historically, only operator of earth stations in country; still largest earth station operator in most cases.</p>
<p><b>PUBLIC NETWORK INFRASTRUCTURE</b></p>	<p>No role in domestic, local, or long distance public network facilities or services.</p>	<p>Historically, only provider of vertically-integrated local, domestic, and international telecom services; still dominant provider in virtually all cases</p>
<p><b>TRANSOCEANIC CABLES</b></p>	<p>No ownership in undersea cables.</p>	<p>Significant ownership shares in undersea cables.</p>

Figure 6

***Of Every Penny Paid by an End User for an International Call, Only a Tiny Fraction Is Attributable to COMSAT's Rates***



Rates on "thick" routes already competitive

Rates on "thin" routes are set at the "thick" route price — and represent only 0.14% of retail carrier costs

*Figure 7*

0.14% of the revenues derived from retail user rates. But actual savings to U.S. carriers would represent, at most, a very small fraction of those already tiny numbers. The carriers would still have to pay the INTELSAT IUC plus a substantial surcharge—*i.e.*, payment in an amount that it would otherwise be entitled to recover in a Fifth amendment takings claim.

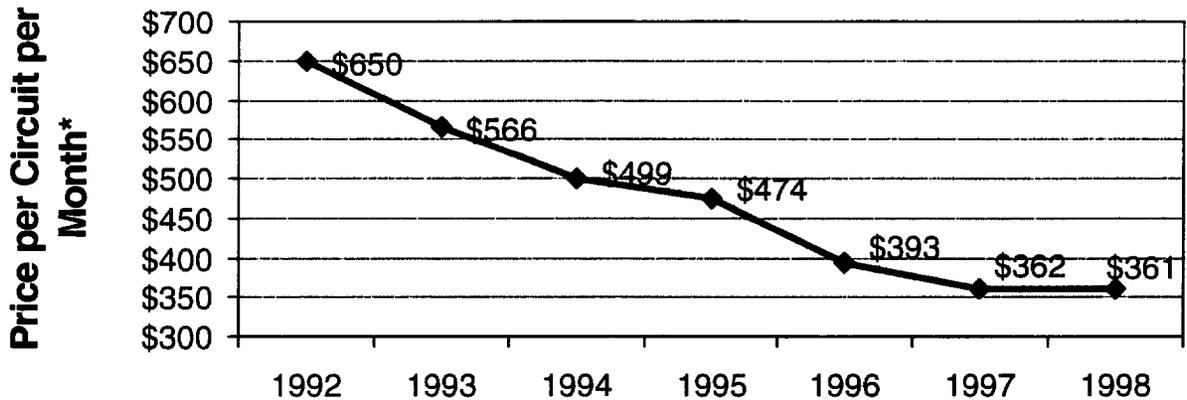
Moreover, the facts before the agency—and its own prior determinations—demonstrate that COMSAT's rates already are highly competitive. However, whatever *de minimis* cost reductions might possibly accrue to U.S. carriers as a result of the implementation of direct access are unlikely to be passed on to end users. Figure 8 charts the decline in COMSAT rates charged to AT&T, MCI, and Sprint since 1992, along with the price hikes that those carriers have implemented for basic international calls during the same period. These facts provide the Commission with no basis for determining that U.S. international callers might somehow benefit from Level 3 direct access. At a minimum, the requirement that any savings be passed through by carriers to end users would be essential as a public interest safeguard.

**XI. The Concrete Harms that Level 3 Direct Access Would Pose for the Public Interest Far Outweigh the (At Best) Speculative Benefits.**

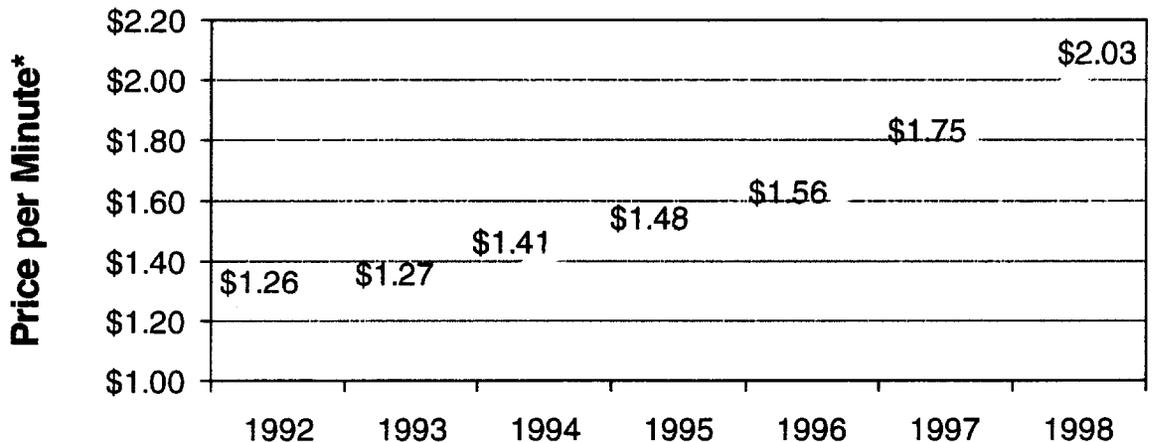
As noted above and illustrated in Figure 9, there is an overwhelming imbalance between the harms and benefits at stake in this proceeding. Level 3 direct access would throw the pending privatization of INTELSAT into jeopardy, and would harm competition by affording a tax-exempt entity an artificial advantage in competing against U.S. rivals fully subject to taxation. And should Level 3 direct access not derail full INTELSAT privatization, the completion of that process will bring about all the benefits that the Commission seeks here—thus rendering the agency's time and effort in this proceeding a waste of resources. On the other side of the scale, there is only the speculative (and, at best, trivial) benefit of savings

# **COMSAT's Rates to Retail Carriers Decrease While Those Carriers Increase Rates to Callers**

## **COMSAT Rate Reductions to AT&T, MCI, and Sprint**



## **Average Cost per Minute for Basic International Calls on AT&T, MCI, and Sprint**

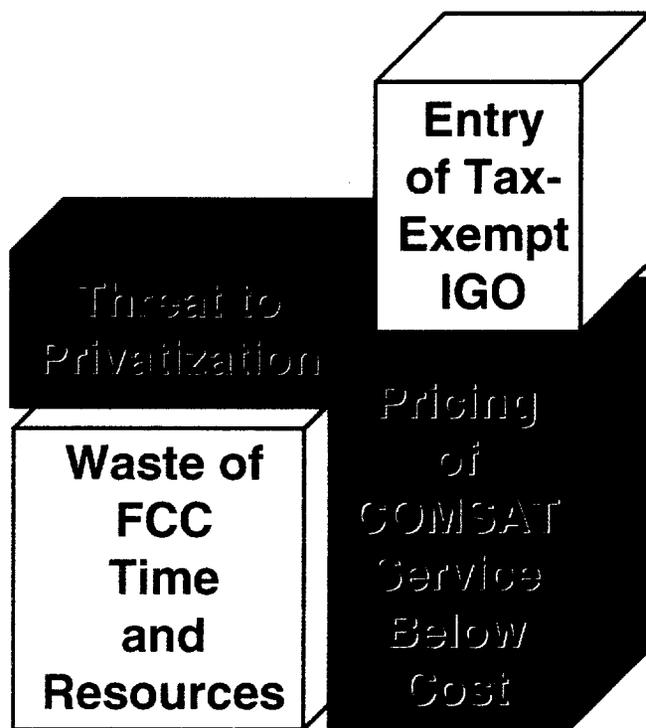


### **Assumptions / Caveats**

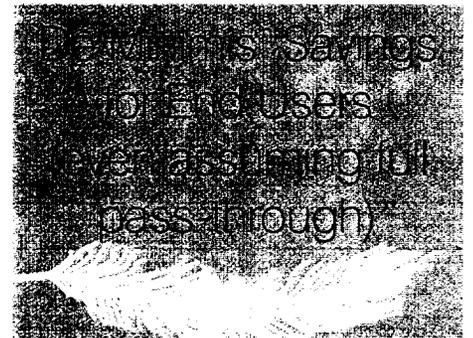
Rates are basic Dial 1 outbound services for residential and business customers. Customers with optional calling plans or under promotional rates or credits would likely have lower rates than here. Data are typical rates for year stated. Other rates may also have been in effect during stated year. 1998 data on revised chart is average rate in effect 12/1/98 (actually after 10/16/98). Rates shown are average of 28 countries with highest total minutes billed in US in FCC 1995 data (excluding Canada and Mexico). Costs to each country are weighted by 1995 average length to that country. The 28 countries used to compile these averages together accounted for 71.3% of total non-Canada/ Mexico international minutes billed in US in 1995. All rate data here comes from these FCC tariffs: AT&T FCC #1; MCI FCC #1; Sprint FCC #1. Rates shown here are typically used by small users. Average rate for each type of call/carrier is weighted by 1995 total minutes billed in US for calls to each country. Residential rates weighted as 25% Standard, 60% Discount, 15% Economy. Business rates weighted as 85% Standard, 10% Discount, 5% Economy. Overall combined weights Res/Bus 50%/50%. Overall averages for Big Three carriers weighted by FCC's 1995 Net International Telephone Revenue per carrier. Sprint Business Dial 1 has not been available to new customers since 7/30/95; some customers may still be on it. It is used here (as are all basic Dial 1 services) for continuity.

*Figure 8*

# ***The Harms of Direct Access Outweigh the Benefits***



**Harms**



**Benefits?**

*Figure 9*

for international callers, with no facts to prove that any theoretical savings actually would be passed through to end users. Simply stated, just as in 1984, the FCC should reject proposals for Level 3 direct access because the “adverse consequences” clearly outweigh any possible benefits.

\* \* \*

In sum, the language and design of the Satellite Act, its legislative history, and its subsequent interpretation demonstrates that the Commission’s proposal to implement Level 3 direct access is unlawful. This form of direct access is irreconcilable with the purpose of the Act to create an independent corporation that has an exclusive position with respect to its relationship to the global system—including provision of services via that system. Indeed, this exclusivity centers on the provision of the INTELSAT space segment services because that is the core function for COMSAT under the Act. Furthermore, because the FCC’s proposal would deprive COMSAT of its constitutional and regulatory contract rights, it would require significant outlays from the U.S. Treasury in compensation. Finally, the current facts before the Commission, and its own prior determinations, demonstrate that there are no policy justifications for implementing Level 3 direct access. This is especially so given the INTELSAT privatization process now underway (which will help bring about direct access and substantial efficiencies) and the very real risk that allowing INTELSAT to directly access the U.S. market prematurely could derail this overriding U.S. policy objective.

