

and have already presented specific privatization proposals with aggressive time lines.<sup>92</sup> Under all privatization options being considered for the remainder of INTELSAT, the *exclusive* distributorship currently maintained by many Signatories would be eliminated.

**B. POTENTIAL BENEFITS WOULD BE MUCH SMALLER THAN IN OTHER COUNTRIES**

Aside from offsetting costs and the short duration of any genuine benefits, such benefits could only be very small even while they last. The *Notice* makes reference to 93 countries that already permit direct access in some form.<sup>93</sup> The apparent purpose of this reference is to imply that direct access for U.S. users would have to be beneficial if it is so widely available abroad. Before one analyzes whether lessons can be drawn from the experience abroad, it is important to understand the true availability of direct access in these countries.

Comsat examined direct access abroad and found that unrestricted access is available in only a few countries. In most other countries, the Signatory still evaluates on a case-by-case basis whether an entity should be granted access and under what conditions. In fact, Comsat notes that in most countries only one entity (in addition to the Signatory) can access INTELSAT directly; and this one other entity sometimes is another government entity, such as the national broadcast company. Moreover, 19 out of the 93 countries are not even INTELSAT members and, thus, represent an entirely different situation—they do not even have a Signatory. In seven other countries, RASCOM (the regional organization providing service within Africa) is the only direct access entity.

Even if these severe restrictions in scope are ignored in assessing the lessons from direct access abroad, it is critical to recognize that the situation in the U.S. is still very different. In particular, the potential for direct access benefits would be much smaller than in other

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<sup>92</sup> "Intelsat Prepares to Get Serious on Privatization," *Telecommunications Reports*, July 13, 1998, p. 30.

<sup>93</sup> *Notice* at 44

countries because: (1) Comsat already faces substantial competition for the majority of its services; (2) there exist alternatives to Comsat even for thin routes; and (3) direct access to INTELSAT in the U.S. is not part of a fundamental restructuring of the telecom industry, hence savings in the U.S. can only apply to Comsat's charges, which account for a much smaller portion of U.S. retail revenues than Signatories' charges abroad.

*Space Segment Savings on Competitive Routes.* Some foreign countries still lack alternative facilities to INTELSAT; and in the countries for which alternative facilities such as cables are available, these facilities are controlled by the horizontally-integrated PTT Signatory. In either case, without direct access to INTELSAT, access to international facilities would either be unavailable to the competitors of the incumbent PTT, or be available only through the PTT—most likely at discriminatory terms. Direct access abroad gives emerging local telecom operators access to INTELSAT without facing their competing Signatories' terms of access; it is, thus, often the only true alternative to PTT dominated international facilities-based service abroad.

In contrast, the FCC has repeatedly recognized that substantial competition now exists for the large majority of Comsat's services—most recently when it found Comsat to be non-dominant. Comsat does not own or control any alternative facilities (i.e., fiber optic cables and other satellite systems), but only provides INTELSAT space segment in competition with those other international facilities.<sup>94</sup> These alternative facilities provide U.S. customers with a number of competitive choices and place substantial market pressure on Comsat. As a result of this fundamental structural difference to the situation abroad, the existence of genuine benefits from U.S. direct access to INTELSAT services competitive routes is highly questionable; and in undoubtedly, such benefits would be much smaller than abroad.

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<sup>94</sup> See also Marius Schwartz, *Introducing Direct Access by U.S. Users to INTELSAT: An Economic Assessment* (submitted in FCC File No. 60-SAT-ISP-97), September 1997 ("Schwartz 1997"), p. 3-4.

*Space Segment Savings on Thin Routes.* For those services on particular routes where Comsat is still deemed dominant—representing only about eight percent of Comsat’s business<sup>95</sup>—Comsat remains subject to dominant carrier regulation by the FCC, probably the most sophisticated and experienced telecom regulator in the world. On these routes, Comsat will be subject to a new FCC-approved incentive regulation scheme, and will also continue to be subject to the FCC’s complaint process. The incentive scheme under consideration for thin routes offers immediate rate reductions, capped rates, and future tariff reductions directly linked to price reductions on competitive routes. In stark contrast, regulatory supervision over foreign PTTs tends to be significantly weaker (if not totally absent), their mark-ups above costs typically are significantly higher.<sup>96</sup> These substantial differences in FCC regulatory oversight relative to that of foreign PTTs *significantly* reduce the potential genuine benefits that direct access could generate even for the particular services on thin routes where Comsat remains classified as a dominant carrier.

In addition, even on “non-competitive” thin routes to and from the U.S., Comsat’s customers have some competitive choices that are unavailable to customers of Signatory PTTs. These alternatives further reduce the benefits achievable under direct access in the U.S. In particular, Teleglobe—the horizontally and vertically integrated Canadian Signatory to INTELSAT— now provides facilities-based service to U.S. customers and aggressively

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<sup>95</sup> Comsat estimates that total revenues from switched voice, private line, and occasional-use video services to “non-competitive” markets amounts to \$19 million in 1998. Thin route occasional-use services accounts for only \$844,000 of Comsat’s annual revenue. Thin route private line service accounts for only 4.2 percent of Comsat’s total private line traffic. ( *Comments of COMSAT Corporation* in FCC, “Policies and Rules for Alternative Incentive-Based Regulation of COMSAT Corporation,” IB Docket No. 98-60, May 29, 1998, pp. 3-7).

<sup>96</sup> Not surprisingly, Brian Knoblock, chairman of the North American National Broadcasting Association, stressed that the most serious problem for INTELSAT users is not a lack of competition to INTELSAT but the lack of open and fair access to markets controlled by foreign monopoly PTTs. He explained that while Comsat may charge U.S. users \$10.50 for a service with IUCs of \$8 per minute of space segment, INTELSAT service providers in some nations charge \$112 for the same service. (“INTELSAT Divestiture Debated,” *Communications Daily*, March 15, 1995, pp. 3-4).

competes with Comsat for international services to and from the U.S.<sup>97</sup> As the world's second-largest owner of undersea fiber optic capacity,<sup>98</sup> Teleglobe stresses that its integrated network (*i.e.*, fiber complemented by international satellite capacity) “*provides customers with connectivity to virtually any point on the globe to meet the full range of their communications needs*”<sup>99</sup>—including service to thin routes via the INTELSAT system.<sup>100</sup> In fact, Teleglobe notes that it is one of the largest international “carriers’ carriers,” handling traffic for more than 95 U.S. carriers and providing service to 240 countries from North America. For the first nine months in 1998, Teleglobe’s total revenues from U.S. customers for switched voice, private line, and video services grew by *140 percent* over the same period a year ago. U.S. traffic now accounts for 16 percent (or \$265 million for January through September, 1998) of Teleglobe’s total 1998 revenues of \$1,659 million for the first three quarters.<sup>101</sup> Importantly, about 15 percent (or \$249 million) of Teleglobe’s revenues for the first three quarters of 1998 came from the (primarily thin route) areas outside of the Americas, Western Europe, and Asia.<sup>102</sup>

With respect to occasional-use video transmission to thin route countries, for example, it was Teleglobe—not Comsat—which carried the television coverage of President Clinton’s visit

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<sup>97</sup> The *Notice* (at 55) specifically requests comments on the extent to which Teleglobe can compete with Comsat.

<sup>98</sup> “Teleglobe ranked world’s 2<sup>nd</sup> largest owner of international fiber optic cable systems,” *Teleglobe Press Release*, McLean, VA, August 4, 1998.

<sup>99</sup> *Id.* [emphasis added].

<sup>100</sup> For example, Teleglobe stresses that it provides intercontinental network service for global Internet connections to more than sixty countries, including service to African countries such as Egypt, Burkina Faso, Gambia, Ghana, Ivory Coast, Kenya, Senegal, and Zimbabwe. (“Eight African nations choose Teleglobe for North American Internet connectivity,” *Teleglobe Press Release*, Johannesburg, South Africa, May 4, 1998).

<sup>101</sup> “Teleglobe reports 32% increase in third quarter earnings per share,” *Teleglobe Press Release*, Montreal, November 5, 1998. Note that Teleglobe’s U.S. originated revenue already substantially exceed the revenues of Comsat’s INTELSAT business.

<sup>102</sup> *Id.*

to Senegal, Ghana, Uganda, Botswana and South Africa for the White House Press Pool.<sup>103</sup> Teleglobe uses its access to U.S. domestic satellite systems and its extensive North American and international fiber optic network to distribute such international transmissions to its final U.S. customers.<sup>104</sup> Because even Comsat's international transmissions still need to be distributed within North America, Teleglobe is at no competitive disadvantage—there is little difference between routing a transmission through a Teleglobe earth station in Montreal to Washington and Los Angeles and routing the same signal through an earth station in New York.<sup>105</sup> Not surprisingly, Teleglobe has been highly successful in recruiting U.S. customers—supporting nearly 80 of the industry's leading television broadcasters (including ABC, BBC, CBC, CBS, CNN, and ESPN).<sup>106</sup> In addition to Teleglobe, Comsat is also exposed to competitive pressures for occasional-use video services, from “repackagers” of full-time space segment capacity leased from Comsat at significant discounts for high volume and long-term commitments.<sup>107</sup>

Thus, even if direct access abroad produced meaningful gains in foreign PTT Signatories' provision of international facilities-based service (related to the INTELSAT space

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<sup>103</sup> “INTELSAT and Teleglobe cover President Clinton's historic visit to Africa,” *Teleglobe Press Release*, Washington, D.C., April 1, 1998.

<sup>104</sup> Teleglobe's broadcast services are supported by three North American teleports that link with INTELSAT, PanAmSat, Orion, the French Telecom, and all U.S. and Canadian satellite systems. Teleglobe also stresses that its fiber video network links five of the world's leading video production sites: Los Angeles, New York, London, Montreal and Vancouver (“Teleglobe lights up Hollywood,” *Teleglobe Press Release*, Amsterdam and Montreal, September 14, 1998).

<sup>105</sup> Despite this fact, however, it can be anticipated that Teleglobe itself will support direct access in the U.S.—particularly because it might mean that Teleglobe's U.S. operations gain below-cost access to INTELSAT space segment at Comsat's expense.

<sup>106</sup> “Teleglobe lights up Hollywood,” *Teleglobe Press Release*, Amsterdam and Montreal, September 14, 1998.

<sup>107</sup> See *Response to Comments on Comsat's Reclassification Petition*, The Brattle Group, July 1997 (submitted in FCC File No. 60-SAT-ISP-97), pp. 24, 27. One reseller, Keystone (now renamed to Globecast and part of France Telecom), accounts for approximately 20 percent of Comsat's entire full-time video leases.

segment)—these benefits would not be realized in the U.S. because Comsat's rates are already exposed to substantial competition or subject to incentive regulation and continued FCC oversight.

***Restructuring Benefits Abroad Misattributed to Direct Access.*** Frequently, large benefits are misattributed to direct access abroad. These large benefits should more accurately be attributed to the fundamental restructuring in local foreign markets that has prompted (or was accompanied by) the introduction of direct access to INTELSAT. These large but misattributed benefits would not be achieved by direct access in the U.S. because: (1) competition in U.S. international retail services is far stronger than in most other countries; (2) Comsat, as a pure-play private satellite services provider does not control local bottleneck facilities and already ensures non-discriminatory access to INTELSAT; and (3) access to domestic bottlenecks is already regulated in the U.S. at prices far closer to costs than is the case abroad.<sup>108</sup>

Unlike Comsat, foreign PTTs are vertically-integrated retail carriers with international retail rates that are considerably higher than U.S. international rates. Because direct access to INTELSAT frequently *coincides with* broad restructuring of the PTT-dominated retail markets, large efficiency gains—associated with the introduction of competition in every segment of the retail service chain (*i.e.*, the entire chain of a vertically-integrated PTT's retail telecommunications circuit)—are possible. These restructuring-related benefits achieved abroad, however, cannot be attributed solely to direct access. Moreover, because competition in international retail markets already exists in the U.S., such benefits have already been realized and, thus, would not coincide with the introduction of direct access in this country.

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<sup>108</sup> See Schwartz 1997; see also *Joint Response to the Satellite Users' Coalition "Analysis of the Privatization of the Intergovernmental Satellite Organizations as Proposed in H.R. 1872 and S. 1382"* Professors H. Houthakker, M. Schwartz and The Brattle Group, March 9, 1998, p. 13.

Relatedly, restructuring abroad generally also introduces access to the vertically-integrated PTTs' *local bottlenecks*, such as the local public switched telephone network (PSTN) and earth stations—bottlenecks which the PTTs could otherwise use to discriminate against emerging competitors even if direct access to INTELSAT were available. In contrast, Comsat does not control (and never has controlled) domestic (“upstream”) bottleneck facilities that it could use to discriminate against the retail carriers.<sup>109</sup> Comsat does not even have the incentive to discriminate against its space segment customers, because it does not have any significant competitive role in its customers’ (“downstream”) retail markets. In fact, because increased retail competition will stimulate the demand for international transmission capacity, it is in Comsat’s direct interest to provide non-discriminatory access to INTELSAT. Moreover, the Satellite Act itself mandates—and continued common carrier regulation of Comsat ensures—Comsat’s provision of non-discriminatory access to INTELSAT for all U.S. users. Again, while direct access *in combination with restructuring* of the PTT Signatories’ local bottlenecks abroad is critical for reducing the PTTs’ ability to discriminate against emerging retail competition, no such benefits could coincide with direct access in the U.S.

Importantly, direct access in combination with the restructuring of local retail markets abroad introduces retail competition that imposes market pressures *directly* on PTTs’ total retail rates and, thus, *directly* benefits end users abroad. In contrast, direct access in the U.S. can affect only the U.S. provision of the INTELSAT space segment (*i.e.*, not the provision of retail service directly). As a result, direct access-related savings in the U.S. (if any) would accrue to the retail carriers, and could only benefit end users to the extent that the carriers pass through these savings in their retail rates—a point addressed in Section VI.C. below.

***The Relative Size of Genuine Potential Benefits in the U.S.*** In contrast to total benefits arising from fundamental telecom restructuring abroad (and which are often misattributed

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<sup>109</sup> Schwartz 1997, p. 4.

to direct access), genuine U.S. direct access benefits can arise only from the carriers' savings associated with Comsat's space segment—which accounts only for a small fraction of the rates U.S. end users pay for international retail service. But even if direct access benefit abroad were measured correctly, we have shown already above that genuine direct access benefits would still be significantly smaller in the U.S.—and realized only to the extent that the carriers' savings are passed-through to end users.

The very limited scope of direct access savings in the U.S. was previously recognized in the 1984 *Direct Access Order* when the Commission found “very little to be gained from [adopting direct access] in terms of cost savings or increased efficiency”<sup>110</sup> and noted that “[w]e are unpersuaded that, whatever benefits are to be derived, they would be so substantial as to outweigh the adverse consequences which are likely to attend the adoption and implementation of direct access.”<sup>111</sup> In fact, the *Notice* even concedes that in 1984, the last time the FCC considered direct access, “the Commission terminated the proceeding, concluding that both alternatives then under consideration would result in little savings to end users and would not be in the public interest.”<sup>112</sup> Because of substantial competition that exists in 1998 and Comsat's rapid decline in market share since 1984, the expected level of savings to end users would be significantly smaller today.<sup>113</sup>

To understand the very limited scope of direct access benefits, it is important to keep in mind the proportion of space segment costs relative to the U.S. carriers' total international retail revenues service. For example, in 1997, Comsat's total revenues from switched voice and private line services to and from the U.S. accounted for approximately \$180 million. In

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<sup>110</sup> 1984 *Direct Access Order*, at 55 [emphasis added].

<sup>111</sup> 1984 *Direct Access Order*, at 3 [emphasis added].

<sup>112</sup> *Notice* at 5.

<sup>113</sup> The *Notice* (at 49) specifically requests comments on whether the situation today might lead to different conclusions than made in the 1984 *Direct Access Order*.

comparison, international telephony revenues of U.S. international retail carriers exceeded \$14 billion. Thus, even if Comsat were to provide its services for *free*, the realized savings in space segment costs would only represent 1.3 percent of the carriers' international retail telephony revenues.<sup>114</sup> In reality, however, end users' retail rates could decrease only by a small fraction of 1.3 percent because (1) genuine space-segment efficiencies are unlikely to be realized on routes that already face substantial competition; (2) space segment efficiencies could only amount to a fraction of Comsat's current rates even on thin routes; (3) space segment savings are unlikely to be passed through fully to end users. In addition, genuine direct access-related benefits would most likely be more than offset by the previously discussed, unique costs associated with introducing direct access in the U.S.

Realistically, it can be expected that genuine benefits from U.S. direct access to INTELSAT could be realized only on the "non-competitive" thin route services. Comsat's annual revenues from these services amount to \$19 million.<sup>115</sup> Thus, even if Comsat provided its thin route services for free, the carriers' space segment savings would represent only 0.14 percent of their international retail revenues. Carriers' actual space-segment savings, of course, would only be a fraction of this 0.14 percent. However, even if any such actual savings were not offset by costs, consumers of thin route service would only benefit if carriers passed through these savings to consumers and channeled them specifically to their thin route service rates.

In sum, any potential genuine benefits from direct access in the U.S. would be considerably smaller than in other countries that have already introduced direct access. The large majority of the international facilities-based telecommunications market to and from the U.S. is

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<sup>114</sup> ( $\$180 \text{ million} / \$14 \text{ billion} = 1.286\%$ ). Note that of the \$14 billion in U.S. carriers' total retail revenues net settlement payments to foreign PTTs accounted for approximately \$5.6 billion. Thus, net payments to foreign PTTs are more than *thirty times* the carriers' payments to Comsat for the U.S. portion of INTELSAT space segment.

<sup>115</sup>  $\$19 \text{ million} \div \$14 \text{ billion} = 0.136\%$

already substantially competitive. Comsat's services to the few remaining non-competitive routes continue are still subject to the FCC's dominant-carrier regulation, and Comsat's customers have available (and actively choose among) alternatives to Comsat even on these thin routes. Furthermore, frequently misattributed savings associated with fundamental restructuring of foreign PTT monopolies (coincidental to the introduction of direct access abroad) would not be realized in the U.S. because, in stark contrast to abroad, U.S. international retail markets are already competitive. In contrast to foreign Signatories, Comsat does not control local bottlenecks and always has ensured non-discriminatory access to INTELSAT. Even assuming that carriers' space-segment savings were indeed passed through and that these benefits were not offset by costs, genuine benefits to end users could still only constitute a small fraction of one percent of the carriers' charges for international retail telecommunications service.

**C. PASS THROUGH OF ANY SPACE-SEGMENT SAVINGS TO END USERS WOULD BE HIGHLY QUESTIONABLE**

However small the potential for direct access-related reductions in the carriers' cost of procuring INTELSAT space segment, it is unlikely that even these savings would be passed through fully to end users.<sup>116</sup> The reason for incomplete pass through of direct access-related savings on the U.S. portion of INTELSAT space segment is twofold: (1) dominant foreign carriers would likely appropriate part of these savings; and (2) it is highly questionable whether the U.S. retail carriers would pass their share of these space-segment savings on to end users.

Regarding point (1), any direct access-related cost reductions for the U.S. portion of INTELSAT space segment is unlikely to fully materialize as savings even to the U.S. carriers. Foreign monopolists could take advantage of any reduced charge for U.S. half-

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<sup>116</sup> The *Notice* (at 51) specifically requested comments from carriers on how they would pass any cost savings on to consumers.

circuits by increasing their own margins and, thus, appropriating some of the U.S. carriers' savings on space segment cost. This is a well known risk posed by one-sided liberalization of international telecommunications<sup>117</sup> and may be particularly relevant for thin route traffic to developing countries.

The *Notice* specifically appears to advocate direct access on "non-competitive" or "thin" routes to developing countries,<sup>118</sup> which would find lower-priced communications especially valuable. Such countries, however, experience high international service rates today primarily because they have typically chosen to retain PTT monopolies and because international service revenues are used to cross-subsidize local telecom infrastructure. On these thin routes, Comsat's charge to international service carriers also is a particularly small portion of the total cost of retail service, given the inflated margins charged by the PTTs for originating or terminating international traffic on their end.<sup>119</sup> Thus, even if Comsat provided its thin route services at substantially reduced rates, this would make barely a dent in the price of international calls to such monopoly markets. As a result, it would take only a minimal increase in a thin route PTT's margin to appropriate all of the U.S. carriers' savings. Moreover, because settlement charges of foreign PTTs have been decreasing, the appropriation of U.S. space segment savings by foreign PTTs could hardly be detected.

Finally, end users would benefit only to the extent that direct access-related reductions in U.S. retail carriers' international transmission costs would be passed through to them—as opposed to increasing the carriers' profits. However, a growing number of studies suggest that a full pass through would be highly unlikely. For example, a June 1997 FCC analysis found that carriers' international service rates have been decreasing more slowly than the

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<sup>117</sup> Evan Kwerel, *Promoting Competition Piecemeal in International Telecommunications*, OPP Working Paper 13, Office of Planning & Policy, Federal Communications Commission, December 1984.

<sup>118</sup> *Notice* at 30 and 53.

<sup>119</sup> See discussion of thin route savings in Section VI.B.

carriers' cost of international service—with the result that “*carriers today realize much greater profits in providing international service than they did a decade earlier.*”<sup>120</sup> The potential failure to pass through carriers' cost savings has also been explored with respect to U.S. long distance service. For example, William Kennard, the Commission's Chairman, noted earlier this year that a “growing body of evidence. . . suggests that the nation's largest long distance companies are raising rates when their costs of providing service are decreasing.”<sup>121</sup> On the same subject, the U.S. Telephone Association recently released the results of two studies finding “‘incontrovertible’ evidence supporting the. . . charge that the three major interexchange carriers (IXCs) are not flowing through their interstate access charge reduction to residential customers.”<sup>122</sup>

These track records also raise questions as to whether U.S. carriers' would pass through their cost savings to the particular category of end users for whom they realize these savings. However, even with full pass through, the carriers may, for example, divert cost savings associated with thin route space segment savings to customers and services on other routes. In either case, the recent controversy as to whether or not the U.S. long distance carriers “pocket” reductions in local access charges also demonstrates that full pass through of direct access savings would be quite difficult to monitor and enforce.

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<sup>120</sup> *Trends in the U.S. International Telecommunications Industry*, Jim Lande and Linda Blake, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, June 1997, p. 62 [emphasis added].

<sup>121</sup> February 26, 1998, letter to Michael C. Armstrong, Chairman & CEO AT&T.

<sup>122</sup> “USTA Studies say IXCs Pocket Access Charge Cuts,” *TeleCompetition Report*, October 29, 1998, p. 14.

## **VII. CONCLUSIONS**

We find that the risks and costs of requiring Level 3 direct access at this time almost certainly far exceed any genuine benefits that might be realized by consumers. Indeed, from an economic perspective, the resources necessary to implement Level 3 direct access could be used far more productively, and would create superior economic benefits for consumers, if they were devoted instead to ensuring a pro-competitive and rapid full privatization of INTELSAT. Direct access, no matter what views are espoused, is at bottom a temporary and economically inferior remedy to address the exclusive-Signatory intergovernmental structure of INTELSAT, a structure which is in the midst of being dismantled and privatized at the very same time direct access is explored in this rulemaking.

**JOINT RESPONSE TO THE SATELLITE USERS' COALITION  
"ANALYSIS OF THE PRIVATIZATION OF THE  
INTERGOVERNMENTAL SATELLITE ORGANIZATIONS  
AS PROPOSED IN H.R. 1872 AND S. 1382"**

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**JOINT RESPONSE TO THE SATELLITE USERS' COALITION  
"ANALYSIS OF THE PRIVATIZATION OF THE INTERGOVERNMENTAL  
SATELLITE ORGANIZATIONS AS PROPOSED IN H.R. 1872 AND S. 1382"**

**SUMMARY**

We were asked by Comsat to review the recently-released "Analysis of the Privatization of the Intergovernmental Satellite Organizations Proposed in H.R. 1872 and S. 1382" (March 1998), hereinafter referred to as the "the Study."<sup>1</sup> The Study highlights the kinds of benefits that could be obtained from privatizing the International Satellite Organizations ("ISOs"), Intelsat and Inmarsat. It also demonstrates that there is little disagreement among U.S. policymakers, Comsat (the private U.S. "Signatory" to both ISOs), satellite users, competitors, and industry experts that privatization of the ISOs is highly desirable.

We agree that privatization of the ISOs should be the goal of U.S. policy. From an economic perspective, however, we fundamentally disagree with the methods proposed in H.R. 1872/S. 1382 (hereinafter H.R. 1872) and advocated in the Study. These specific proposals are based on faulty economic logic and a gross mischaracterization of the state of competition in satellite services, the source of any remaining obstacles, and the nature of Comsat's relationship to the ISOs. While the paper masquerades as a serious study, it is in fact riddled with misconceptions and errors. We firmly believe that it would be imprudent to rely on the results of this Study, and that adopting H.R. 1872 in its current form would, in actuality, achieve the reverse of its stated goals—delay privatization, antagonize U.S. trading partners worldwide, and reduce rather than increase competition.

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<sup>1</sup> The analysis was prepared by the "Satellite Users' Coalition," whose members are not identified in the study. According to a press release, the members appear to be AT&T, Worldcom/MCI, and Sprint. As stated in a footnote, Economists Inc. was consulted only on the "methodologies used in the economic calculations." However, no economists have claimed authorship of the calculated benefits. Key policy prescriptions and exact language (as well as page layout) coincide, without reference, with a related study that Economists Inc. recently prepared on behalf of PanAmSat. Since neither the economists nor the companies involved in preparing this analysis claimed authorship, we refer to it only as "the Study."

### *Targeting Comsat and the ISOs Will Not Improve Foreign Market Access*

The Study incorrectly assumes that—even if the bill’s terms and conditions regarding privatization of the ISOs and forced-divestiture of foreign co-owners could be met—foreign carriers and governments would open their local markets, eliminate market power over local bottleneck facilities, and privatize. However, since the source of market power lies not with the ISOs but with local bottlenecks controlled by governments or PTTs in certain foreign countries, privatizing the ISOs and forcing full divestiture of their co-owner PTTs is essentially ineffective in opening up those markets. For example, barring PTTs that control market access to their countries from ownership in a privatized ISO (or successor entity) would not preclude them from establishing ownership in undersea cable or satellite systems that could provide them services similar to what they now obtain from the ISOs—while continuing to restrict market access for others. Therefore, U.S. efforts should be targeted not at the investment preferences of PTTs, but at the root problem—opening up the PTTs’ markets directly.

### *Comsat and the ISOs Already Face Substantial Competition*

The Study’s assertion that Comsat/Intelsat “still has a monopoly or dominant share of the relevant market” reflects its utter failure to recognize that Comsat and Intelsat are exposed to substantial competition today. In fact, there is broad consensus that substantial facilities-based competition currently exists for the vast majority of services provided by Comsat and the ISOs. The proliferation of undersea fiber optic cables has decreased Comsat’s market share in telephony and data from 70 percent in 1988 to 20 percent in 1996; and satellite competitors have reduced Comsat’s market share in video transmissions from 80 percent in 1993 to less than 45 percent in 1996. Competition is increasing further. PanAmSat alone now has 17 satellite in orbit and will launch 4 more over the course of 1998; and the Study itself notes that U.S. companies plan to invest over \$62 billion in new satellite systems over the course of the next few years.

### *Flawed Analysis of Direct Access*

The Study is critically flawed in its treatment of "direct access." It falsely assumes that Comsat itself "provides no facilities to its customers" but merely "resells" ISO capacity which it obtains at a wholesale rate. This belief altogether ignores the crucial fact that Comsat has invested in and owns the share of the ISO capacity it uses to serve U.S. customers. Direct access at the so-called "utilization charges" would allow carriers to "free ride" on Comsat's investments and statutory Signatory functions, thereby causing a situation where Comsat could not recover its costs for services it is obligated to continue to provide on behalf of all U.S. users. Moreover, if Comsat's costs were quantified properly, the alleged 35 percent savings from direct access actually would be zero (using the Study's own methodology). That is because what could be interpreted as a Comsat "resell margin" is already below the 20 to 33 percent competitive benchmark used in the Study.

In stark contrast to countries that have implemented direct access, it is not needed to bring the benefit of competition to U.S. consumers. U.S. users can already choose from a multitude of alternative cable and satellite facilities to satisfy their international telecommunications requirement, and Comsat (alone among all U.S. satellite companies) is already obligated to provide non-discriminatory access to the facilities it owns. In addition, Comsat faces direct competition in the provision of Intelsat services by the Canadian Signatory, Teleglobe, which is aggressively pursuing U.S. carriers and end-users. As a result, the benefits which "direct access" (as defined in the Study) could provide to U.S. consumers are negligible and would be more than offset by likely delays it would cause in the privatization effort. We agree with the Clinton Administration's witness on H.R. 1872 who testified:

If we can be successful in implementing privatization of Intelsat, there is little reason to be distracted by introducing new access regimes. This is especially the case if, as seems likely, with either direct access or multiple signatories we would be inviting foreign-owned entities to enter the U.S. marketplace thereby reducing their incentives to support a more general global pro-competitive outcome via Intelsat privatization. (Testimony of Mr. Jack A. Gleason of the NTIA, before the House Subcommittee on Telecommunications, September 30, 1997.)

*H.R. 1872 Would Harm Consumers and Undermine Ongoing Privatization Efforts*

We too firmly support privatization, because it would allow the ISOs' assets to be used more efficiently and more flexibly, thereby benefitting customers directly as well as indirectly—by stimulating competition. The real question is how to achieve pro-competitive privatization. Since numerous sovereign nations have stakes in the ISOs, determining the shape and timing of privatization is not a matter for unilateral U.S. dictates. The Study asserts that the mandates of H.R. 1872 would establish “incentives” to ensure procompetitive privatization. The more likely outcome, however, would be that the bill's uncompromising nature undermines ongoing privatization efforts, and that its penalty and forced divestiture provisions would cause a trade-policy backlash which could broadly threaten or delay both privatization and the opening of overseas telecommunications markets.

The Study also fails to recognize that H.R. 1872 in its current form mandates severe economic penalties for the failure to achieve privatization of the ISOs on U.S. unilaterally-imposed, uncompromising schedules and terms. These penalties would decrease competition by excluding Comsat from serving U.S. markets, reduce competition, profit Comsat's competitors, raise prices to U.S. users, and deprive consumers of the very benefits of privatization that the Study set out to quantify.

## TARGETING COMSAT AND THE ISOS WILL NOT IMPROVE FOREIGN MARKET ACCESS

The analysis presented in the Study perpetuates the misconception that targeting Comsat and the ISOs will address the market access problems associated with the monopoly power of some foreign post, telephone, and telegraph ("PTT") administrations. However, targeting the ISOs cannot solve these market access problems, simply because it will not diminish the local monopoly power of foreign carriers. These market access issues must be addressed directly, such as through implementation of the WTO Agreement and pursuing further initiatives with foreign governments. The notion that privatizing or penalizing the ISOs would induce PTTs to roll over and open their markets where they otherwise have the ability and incentive to restrict entry is, at best, wishful thinking.

The key policy issue in privatizing the ISOs is not whether some market access barriers exist for independent satellite systems abroad (they do), but whether targeting Comsat and the ISOs is an effective way to improve such access. The distinction is critical, because Comsat and Intelsat provide only the space segment to connect countries; they have no control over access policies or pricing to customers within countries. Two studies by Professor Schwartz of Georgetown University investigate in great detail the link between targeting Intelsat and foreign market access.<sup>2</sup>

In particular, the belief that targeting Comsat and the ISOs will improve access for independent satellite systems hinges on two premises: (a) barring a PTT from offering certain retail services would induce it to open such markets to competition; and (b) a PTT can be barred from such retail services by curbing its links to the ISOs or the services for which ISO capacity inputs may be used.<sup>3</sup> Both premises are badly flawed.

Even if a PTT could be forced to abandon providing retail services itself, as long as it has the ability to restrict market access, it could continue to do so rather than offer non-discriminatory access to all service providers. For example, it could partner with a single independent satellite system and keep the market closed to all others, regardless of

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<sup>2</sup> *Competition in International Satellite Services: Whither Intelsat Restructuring*, November 19, 1997 ("Schwartz 1997") and *Intelsat Restructuring and Comsat's Non-Dominance: Reply to Dr. Owen and Professor Waverman*, March 1998 ("Schwartz 1998"). The following section draws upon Professor Schwartz's conclusions.

<sup>3</sup> This second premise is crucial, because the U.S. of course has no authority to dictate directly which services a PTT may provide to and from its own country. Thus, the theory hinges on restricting the PTT's use of ISO inputs.

what happens to Intelsat. The PTT with a monopoly over market access would extract most of the profits by playing off (“whipsawing”) competing independent systems for the right to be the PTT’s partner. Or it could admit multiple systems, but only if they agree not to bypass certain PTT bottlenecks.

If a PTT wished to remain a provider of retail services which it now offers using ISO capacity, the PTT could turn to alternative facilities, such as fiber-optic cables or regional satellite systems. If need be, the PTT could even establish its own international facilities. Such new facilities would not have to replicate the ISO systems in their global reach; a PTT would only need a transmission link to a “nearby” international communications hub from which it could gain global connectivity. Thus, the option of using alternative facilities is very real for PTT monopolies. As Professor Waverman put it:

For almost all countries on earth, a combination of domestic and regional satellite and [transoceanic] cable systems can provide IPSN, or ‘international public switched telephone service.’ . . . Indeed, there are competitive choices of facilities and links for virtually all countries, including the diminishing number of countries that are dependent on satellite connections. . . .<sup>4</sup>

In short, the notion that privatizing ISOs (including forced PTT divestiture) would induce PTTs to open their markets—where they otherwise have the ability and incentive to restrict entry—is far-fetched; PTTs could turn to alternative facilities to preserve their monopolies. Policies targeting the ISOs cannot improve market access meaningfully in countries that restrict it.

While ISO privatization and PTT divestiture are not likely to resolve market access problems, there should be no doubt that there still exist local market access barriers in certain countries. The Study, however, overstates the extent to which operators of international telecommunications facilities (satellites and cables) truly face these barriers. Comsat’s competitors, in particular satellite operators, have every incentive to exaggerate them, as a “justification” for limiting Comsat’s ability to compete so as to reduce competition.

For example, and in sharp contrast with its complaints to policymakers, PanAmSat proclaims to investors that “. . . national telecommunications authorities have not typically required the Company to obtain licenses or regulatory authorizations in order to provide

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<sup>4</sup> Leonard Waverman. *An Analysis of the Concept of Universal Service as Applied to Intelsat*, Report prepared for PanAmSat. April 1997. pp. 5-8 [emphasis in original].

space segment capacity to licensed entities [of those countries].”<sup>5</sup> Moreover, a remarkably comprehensive court opinion in PanAmSat’s antitrust suit against Comsat (alleging a PTT conspiracy to exclude PanAmSat) reads:

Plaintiffs’ own citations reveal that [PanAmSat] did in fact obtain authorization to enter the markets of most of the alleged PTT conspirators’ home countries. . . . [and] these citations also admit that the local PTT monopolies assisted [PanAmSat] in gaining market access. . . .”<sup>6</sup>

Last year, Globalstar had secured agreements to conduct operations in numerous countries, even before a single satellite had been launched. (Globalstar, *Corporate Overview*, Webpage, as of July 1, 1997.) Although Globalstar is a low-earth-orbit satellite system to provide mobile services in competition with Inmarsat, it expects approximately 30 percent of its business to come from fixed services as well (*Satellite Communications*, March 1998, p. 22). The fact that Globalstar apparently has not encountered serious access problems for new services also undermines the argument that the ISOs should be barred from expanding into new services on the grounds that their Signatory PTTs would let them monopolize such services.

Indeed, Iridium’s experience is consistent with Globalstar’s. In a recent interview, Iridium Chairman Robert Kinzie noted:

We have identified 90 priority countries that account for about 96 percent of our business plan and we believe we have a very good chance of obtaining all those licenses by commercial service [later in 1998]. We are also making progress with the other 149 countries that account for a smaller portion of our business. *We have not encountered any opposition from any country. On the contrary, countries are interested in providing Iridium services in their territories, but the process is a long one and varies from country to country.* (*Via Satellite*, February 1998, pp. 25-26 [emphasis added].)

## **COMSAT AND INTELSAT ALREADY FACE SUBSTANTIAL FACILITIES-BASED COMPETITION**

The Study’s analysis of the benefits to U.S. consumers from privatization of the ISOs is based on the premise that neither Comsat nor Intelsat are exposed to competition. This premise is plainly wrong. There is broad agreement among industry analysts, U.S.

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<sup>5</sup> PanAmSat Corporation. Prospectus, September 25, 1995, p. 63.

<sup>6</sup> Opinion and Order in *Alpha Lyracom Space Communications, Inc., Reynold V. Anselmo, Pan American Satellite, and PanAmSat, L.P. v Comsat Corporation, Defendant*, 89 Civ. 5021, 58-69 (S.D.N.Y. Sept. 4, 1996).

regulators (the FCC), and even other satellite operators, that substantial competition already exists for the vast majority of services provided by Comsat.

For example, the FCC determined last year with respect to transoceanic switched voice and private line markets (*i.e.*, telephony and data) that “*there is substantial competition in the space segment service market [and] available transmission capacity has dramatically increased on most routes with the introduction of satellite and cable capacity that competes with Intelsat.*”<sup>7</sup> More recently, the FCC concluded that “*substantial competition exists in the full-time video services market.*”<sup>8</sup> With respect to regional service to Latin America, the FCC also found that “we cannot ignore the substantial satellite capacity available on non-U.S. licensed satellite systems [suggesting] that competition is both the current state of affairs and the likely future state of affairs in this market.”<sup>9</sup>

Similarly, Professor Jerry A. Hausman of MIT points out—in a statement to the FCC on behalf of Intelsat’s competitor, PanAmSat—that, with respect to satellite services to Latin America and for the other areas of the world, “competition is substantial. . . [and] significant new entry and expansion is currently planned.”<sup>10</sup> Hughes agrees that both IMTS (international message telephone services) and non-IMTS markets are sufficiently competitive to prevent abuses of market power.<sup>11</sup> And PanAmSat stresses that “the international FSS [fixed satellite services] market in which PanAmSat competes is *extremely competitive.*”<sup>12</sup>

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<sup>7</sup> Federal Communications Commission, *Petition for Partial Relief From the Current Regulatory Treatment of COMSAT World Systems’ Switched Voice, Private Line, and Video and Audio Services*, RM No. 7913, FCC 96-349, (rel. Aug. 15, 1996) (“1996 Partial Relief Order”), ¶ 21 [emphasis added].

<sup>8</sup> Federal Communications Commission, *Petition for Partial Relief From the Current Regulatory Treatment of COMSAT World Systems’ Switched Voice, Private Line, and Video and Audio Services*, FCC File No. 14-SAT-ISP-97, DA 97-1741 (rel. Aug. 14, 1997), ¶37 [emphasis added].

<sup>9</sup> Federal Communications Commission, Order and Authorization, in *re Hughes Communications, Inc.*, FCC File No. 2-SAT-AL-97(11), *et al.* (April 4, 1997) (“1997 Partial Relief Order”), ¶ 25.

<sup>10</sup> *Statement of Professor Jerry A. Hausman*, attached to Opposition of Hughes Communications, Inc. and Affiliated Companies, in *re Hughes Communications, Inc., et al.*, FCC File No. 2-SAT-AL-97(11) (December 12), ¶ 9-11, 14.

<sup>11</sup> Opposition of Hughes Communications, Inc. and Affiliated Companies, in *re Hughes Communications, Inc., et al.*, FCC File No. 2-SAT-AL-97(11) (December 12), p. 10.

<sup>12</sup> Opposition of PanAmSat Licensee Corp., in *re Hughes Communications, Inc., et al.*, FCC File No. 2-SAT-AL-97(11) (December 12), p. 9 [emphasis added].

Trends in Comsat's market shares confirm these observations. Intelsat's share of switched voice and private line traffic to and from the U.S. has decreased from an average of 70 percent in 1988 to less than 21 percent in 1996.<sup>13</sup> Perhaps even more striking, over the course of only three years Intelsat's share in video transmissions to and from the U.S. has dropped from 80 percent in 1993 to less than 45 percent in 1996.<sup>14</sup>

Thus, the Study's assertion that Comsat/Intelsat still has a monopoly in U.S. international satellite services or that it can "preclude competition" is groundless. There has been an explosion of international submarine fiber optic systems that span the globe today and which compete with Intelsat for telephony and data services. Many competing satellite systems also have been launched in the last several years. In fact, Intelsat accounted for less than 37 percent of world-wide in-orbit satellite capacity in 1995, and for *less than 10 percent of contracted future launches of new (and replacement) satellites*.<sup>15</sup> Even the Study itself stresses that U.S. companies already plan to invest over \$62 billion in new international satellite systems.

The Study's premise that Comsat or Intelsat dominate the world's satellite markets also contradicts the statements of financial analysts and competitors themselves. For example, PanAmSat now notes in its press releases:

PanAmSat . . . is the world's leading commercial provider of satellite-based communications services. The company operates a global network of 17 satellites supported by PanAmSat professionals on five continents. These resources enable PanAmSat to provide broadcast and telecommunications services to hundreds of customers world wide.<sup>16</sup>

Two years ago, PanAmSat already touted itself as a leading provider of video services to the Asia-Pacific region, and *the* leading provider of video service to Latin America, Africa, and South Asia.<sup>17</sup> In Fall 1996, after the announcement of the merger

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<sup>13</sup> See 1996 Partial Relief Order, ¶¶ 15, 21; see also Hendrik S. Houthakker and The Brattle Group, *Competition in Transoceanic Switched Voice and Private Line Services To and From the U.S.: 1996 Update*, April 21, 1997.

<sup>14</sup> See 1997 Partial Relief Order, ¶¶ 28-29.

<sup>15</sup> Merrill Lynch, *The Global Satellite Marketplace*, April 1997 (Tables 23 and 31).

<sup>16</sup> Ironically this quotation is found in the press release "PanAmSat Releases Two New Studies Demonstrating that Intelsat and Its Owners (Including Comsat) Retain Significant Market Power," February 17, 1998. PanAmSat's 17 existing satellites and 4 about-to-be-launched satellites, compare to Intelsat's 25 existing satellites, and plans for one additional spacecraft (net of replacement satellites).

<sup>17</sup> PanAmSat, SEC Form 10-K, 1995, p. 33.

with Hughes, Patrick Costello of PanAmSat stated that “[t]he satellite market will be ours to lose at this point”<sup>18</sup>—a sentiment consistent with that of industry analysts:

[PanAmSat’s] global presence and ability to provide one-stop shopping to its global customers, as well as its additional orbital assignment to accommodate growth, will position PanAmSat as the clear industry leader worldwide in fixed satellite services (FSS).<sup>19</sup>

The ISOs’ market position is overstated even for so-called “thin-route” telecommunications services (mostly to countries not yet served by fiber-optic cables).<sup>20</sup> For example, one of PanAmSat’s consultants, Professor Waverman, recently noted:

Of the 209 members of the ITU, and the 139 members of Intelsat only 73 countries *currently* rely on satellites for connections to other countries and at the turn of the century at most 50 will. . . . Optical fiber cables connect all but 73 of the earth’s countries. . . . These 73 countries. . . are mainly in Africa, and account for a tiny percentage of world telecommunications traffic. *Indeed, there are competitive choices of facilities and links for virtually all countries, including the diminishing number of countries that are dependent on satellite connections.* . . .<sup>21</sup>

#### **THE STUDY IS BASED ON FUNDAMENTALLY FLAWED ANALYSES**

In its attempt to quantify the benefits of ISO restructuring, the Study references independent research indicating that privatization of other firms and industries has been associated with annual unit cost declines of 1.7 to 1.9 percent. These are probably not unreasonable expectations. The Study then estimates that, over the course of ten years, increased productivity growth for the two ISOs would create savings with the present value of over \$600 million. Unfortunately, however, the remainder of the Study’s analyses is fraught with misconceptions, errors, and double counting. We summarize here briefly only some of the Study’s major flaws.

#### ***The Study Inappropriately Relies on Miscalculated Operating Margins***

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<sup>18</sup> Transcript of PanAmSat Analysts Phone Conference, September 20, 1996.

<sup>19</sup> Bear, Stearns & Co., Inc., *Satellite Communications*, November 5, 1996, p. 83.

<sup>20</sup> To the extent that concerns about ISO market positions still exist in such narrow market segments, these services are best addressed through targeted regulatory safeguards, rather than sweeping and uncompromising conditions which would broadly foreclose ISO market participation and, thus, reduce competition even for the large majority of services where there is broad consensus that substantial competition to the ISOs currently exists.

<sup>21</sup> Leonard Waverman, *An Analysis of the Concept of Universal Service as Applied to Intelsat*, Report prepared for PanAmSat, April 1997, pp. 5-8 [emphasis in original].

The Study calculates additional “consumer benefits” based on the differences in ISO operating margins relative to the operating margin of PanAmSat. There is, first, a serious conceptual problem with this approach: operating margins are neither a measure of productivity nor a measure of “price-cost margins.” In fact, capital-intensive industries will generally have high operating margins because these “margins” must cover debt service expenses and provide a return on investment. Operating margins also are greatly dependent on accounting treatment. For example, a company that leases its assets will have a lower operating margin than an otherwise identical company that owns the assets. This is because lease payments are accounted as operating expenses but interest payments and return on equity capital are not.

The Study calculates operating margins as 46 percent for Intelsat, 76 percent for Inmarsat, and 39 percent for PanAmSat. Based on the differences in operating margin, the Study then asserts that privatization would trigger an *immediate* 62 percent reduction in Inmarsat prices and an *immediate* 24 percent reduction in Intelsat prices. While there is no doubt that privatization will generate efficiencies, these results are plainly wrong and clearly misleading. For example, Inmarsat operating margins are calculated incorrectly (by excluding amortization and lease expenditures from operating expenses). If this mistake is corrected, Inmarsat’s “margin” decreases from the alleged 76 percent to 37 percent. If one accepted the Study’s flawed conceptual approach, correcting this error alone would reduce calculated consumer benefits by \$3.8 billion. Moreover, for 1996 and the first three quarters of 1997, PanAmSat’s operating margin was in the 46 to 48 percent range (compared to the 1994-1996 average of 39 percent)—a operating margin that is essentially identical to Intelsat’s. If that number were used, the Study’s calculated consumer benefits would decrease by another \$3 billion.

### *The Study Double Counts Claimed Government Benefits*

The Study uses its results regarding privatization’s effects on ISO costs and operating margins in an attempt to quantify “taxpayer benefits” due to the reduction in the procurement costs of international telecommunications services for the U.S. government (including the Department of Defense). However, the Study not only ignores that these services are already procured through competitive bidding with the active participation of competing satellite system operators and other carriers, but also fails to consider that—because the U.S. government is one of the U.S. users of the ISOs through Comsat—these “taxpayer savings” are already part of the “benefits” previously calculated for all U.S. users.

### *The Study's Estimated Service Expansion is Grossly Overstated*

The Study attempts to calculate the "value of additional output of various services" that would be created by price reductions for ISO services. The Study then uses retail "demand elasticities" as a measure of consumers' response to these price reductions. This approach, however, leads to substantially overstated results.

The cost of satellite services is only a small fraction of the cost of retail telecommunications services offered to consumers. For example, Comsat's total revenues from providing Intelsat capacity to retail carriers such as AT&T, Worldcom/MCI and Sprint amount to approximately \$180 million (which is the cost of satellite service to these carriers) while the carriers' retail revenues from international services (*i.e.*, the cost to consumers) exceeds \$14 billion. Thus, assuming the retail carriers pass on all privatization-related reductions in the cost of satellite services to consumers, average retail rates would decrease by only 1.0 percent, even if satellite costs decreased by \$140 million (*i.e.*, 80 percent). If one also takes into account that these retail carriers use satellite connections for only approximately 20 percent of their traffic to and from the U.S. (the remainder being carried on submarine fiber optic cables)—a full pass-through of a \$140 million reduction in satellite costs (*i.e.*, an unrealistic decrease of 80 percent), would still only translate into a 5 percent reduction in retail prices to those customers. Thus, based on the Study's "elasticity" assumption, its estimated service expansion is overstated by at least a factor of twenty.

### *The Study is Based on an Erroneous and Misleading Analysis of "Direct Access"*

The Study also is seriously flawed and misleading in its treatment of "direct access." In stark contrast to other countries that have implemented direct access, it is not needed to bring the benefit of competition to U.S. consumers. Unlike in many other countries: (1) the U.S. already enjoys substantial facilities-based competition to Intelsat (via fiber optic cables and other satellites) which offers customers a multitude of choices and imposes market discipline on Comsat and the prices it charges; (2) Comsat, as the U.S. Signatory, does not control local bottleneck facilities; and (3) non-discriminatory access to Intelsat has always existed in the U.S. through Comsat as a private entity which, unlike foreign PTTs, is not vertically integrated.<sup>22</sup>

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<sup>22</sup> See Marius Schwartz, *Introducing Direct Access by U.S. Users to Intelsat: An Economic Assessment*, September, 1997.

Substantial competitive pressures have also forced Comsat to reduce costs and to offer substantial rate reductions to its customers. For example, Comsat's rate for a (full-time) digital international telecommunications circuit to AT&T, MCI, and Sprint, has decreased from \$883 per month in 1988 (when digital circuits were first offered) to \$350 per month in 1997. The competitive choices available to Comsat's customers are further reflected in Comsat's rapidly declining market, which are noted above. Furthermore, Comsat is not the exclusive choice today for U.S. users seeking Intelsat capacity. Teleglobe, the Canadian Signatory to Intelsat, now is competing aggressively for U.S. users by offering facilities-based international telecommunications services through Intelsat (and the company's extensive North American and international fiber-optic network).

As a result, the benefits which "direct access" could provide to U.S. consumers would be negligible. Direct access would not meaningfully increase competition or lower prices—as the FCC itself has previously concluded.<sup>23</sup> Indeed, it could lead to undesirable concentration in the control of competing cable and satellite systems (if "Level 4" direct access were permitted), and it would allow Intelsat (an international organization immune from U.S. taxation and antitrust laws) to contract directly with U.S. users. With either "Level 3" or "Level 4" access, this would impede the privatization process by creating new stakeholders (some of which could be foreign PTTs opposed to privatization) with their own vested interests to pursue.

Another serious error is that the Study's analysis of direct access rests on the misconception that Comsat only resells Intelsat capacity and that differences between the "Intelsat Utilization Charges" (IUC) and that Comsat rates are a pure "mark-up" or "margin."<sup>24</sup> However, unlike a reseller, Comsat has invested in and owns the share of Intelsat capacity it uses to serve U.S. customers, and the IUC is an Intelsat-internal accounting rate and does not reflect Comsat's full cost of providing Intelsat capacity.<sup>25</sup> In particular, the IUC does not reflect many costs (*e.g.*, launch and satellite insurance, and Signatory functions) that Comsat would have to bear on behalf of direct access customers. If quantified correctly, Comsat-internal costs not related to its Intelsat

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<sup>23</sup> *Regulatory Policies Concerning Direct Access to Intelsat Space Segment for the U.S. International Service Carriers*, 97 FCC 2d (1984), *aff'd*, *Western Union International, Inc. v. FCC*, 804 F. 2d 1280, 1285 (D.C. Cir. 1986).

<sup>24</sup> For a more detailed discussion, see Jerry R. Green and The Brattle Group, *An Economic Evaluation of Direct Access to the Intelsat System by U.S. Telecommunications Customers*, October 1995.

<sup>25</sup> This point was also stressed in G. Keeney's December 22, 1997, response to Chairman Bliley's question #14 to the FCC. See also the Administration's January 23, 1998, answers to Chairman Bliley's question #15.

Signatory and investment obligations are already below the 20 to 33 percent “resell margin” which the Study holds out to be competitive. As a result, according to the Study’s methodology, direct access benefits would be *zero*.

The Study fails to recognize that if direct access were permitted before the ISOs can be privatized (and their special privileges and immunities removed), it would allow the ISOs as currently organized (with their alleged privileges) and foreign carriers to enter the U.S. market directly. As the Clinton Administration’s witness, Mr. Jack Gleason, recently testified, this would reduce those parties’ incentives to support a more general pro-competitive outcome via Intelsat privatization. Importantly, privatization as currently pursued by Comsat and the U.S. administration would allow privatized ISOs (or their successor entities) to serve U.S. customers directly (or through non-exclusive distributorships) and, thus, automatically provide “direct access.”

### *The Study is Based on Unrealistic Expectations*

In addition to ISO-related efficiencies from privatization, the Study holds out privatization as the proverbial “silver bullet” which would: (1) increase the efficiency of Intelsat’s competitors; (2) protect the investment of Intelsat’s competitors; (3) create and protect the investments (and 30,000 jobs) associated with already planned satellite systems; (4) solve foreign market access problems and mitigate the local market power of certain PTTs in the provision of telecommunications services; (5) facilitate privatization of foreign PTTs, opening up opportunities to U.S. investors; and (6) open up foreign markets to U.S. suppliers of telecommunications equipment.

If this was true, ISO privatization would, indeed, be the “magic wand” of trade policy. We have already addressed above the Study’s unfounded claims with respect to opening foreign local telecommunications markets. The other alleged benefits are even more far-fetched. If the authors of the Study (whoever they are) truly believed in all these benefits would result from privatization, it is even more surprising that they support H.R. 1872. Through its unilateral and uncompromising nature, this bill would likely harm U.S. consumers in addition to depriving them of the very benefits that the Study set out to quantify.

### **H.R. 1872 WOULD HARM CONSUMERS AND UNDERMINE ONGOING PRIVATIZATION EFFORTS**

The Study does not consider that H.R. 1872 in its current form contains (1) harsh provisions that are effective upon enactment; and (2) severe and unwarranted penalties for Comsat if privatization of the ISOs cannot be achieved according to the unilaterally-

imposed schedule and terms. These provisions include prohibiting Comsat from providing new and many existing services to U.S. consumers. Considering the fact that restructuring and privatization of the ISOs requires broad international consensus, the unilaterally-imposed schedule and conditions for full privatization would most likely trigger the bill's penalty provisions.<sup>26</sup>

These penalties would benefit Comsat's competitors, but would harm U.S. consumers. First, it is possible that the bill would result in a foreign backlash that actually impedes privatization. Worse yet, the bill would force Comsat out of most U.S. international telecommunications markets, because it is doubtful that over 140 nations involved could coordinate and agree to achieve privatization on the rather aggressive timetable and in full compliance with all specified conditions. As a result, competition and services in the U.S. market would be reduced (from current levels) *even if privatization was achieved ultimately* in a somewhat different form. Not only would this deprive U.S. consumers of the resulting benefits but it would also subject them to potential market power by the remaining satellite competitors to boot.

Professor Houthakker and *The Brattle Group* have previously reviewed the bill from an economic perspective<sup>27</sup> and reached the following conclusions:

*The bill would benefit Intelsat's competitors but harm competition.* Excluding Intelsat from the U.S. market for many of its services effectively eliminates an important satellite competitor. This would benefit already highly-successful competitors to Intelsat and Comsat but would reduce competition.

*The bill would increase prices and harm U.S. consumers.* By forcing Intelsat to cease most of its U.S. services, the bill would not only result in fewer service options to U.S. consumers but would also increase prices. Ironically, this outcome is not unlike one in which an entity with market power reduces output to achieve supra-competitive prices. Moreover, any efficiencies that Intelsat can still offer to U.S. consumers will be lost. This harm would be compounded by the fact that many U.S. consumers have substantial investments in complementary infrastructure, such as earth stations, that could be rendered worthless. These consumers would then face additional costs for new equipment to access other service providers.

*The bill would destroy U.S. private investment in Intelsat.* Excluding Intelsat from providing additional and non-core existing services to U.S. consumers would

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<sup>26</sup> For example, it is highly unlikely that *all* participating governments would either (1) fully open their local telecommunications markets; or (2) accept forced full divestiture on the terms incorporated in the bill. It is even less likely that foreign co-owners and participating governments would accept the immediately-effective "stand-still" conditions and, at the same time, support rapid full privatization.

<sup>27</sup> *An Economic Assessment of H.R. 1872*, September 26, 1997.

strand Intelsat capacity and needlessly destroy the value of U.S. private investments in Intelsat (*i.e.*, the investment of Comsat's shareholders).

*The bill could provoke severe backlash from U.S. trading partners.* Forced divestiture and the exclusion of Intelsat from U.S. markets has the potential to harm U.S. consumers even beyond the direct damage it imposes on them from reduced competition, destroyed value of investments, and increased prices. Attempts to handicap Intelsat and impose a U.S. timetable and terms for privatization from trading partners may induce a broad range of retaliatory measures. The result would be to threaten much more broadly the opening of foreign telecommunications markets—a prospect more harmful for U.S. consumers even than the direct costs this bill would impose on users of satellite services.

## CONCLUSIONS

We agree that privatization of the ISOs can offer significant efficiencies and should be the target of U.S. policy. From an economic perspective, however, we fundamentally disagree with other conclusions reached in this Study. The Study exhibits a fundamental misunderstanding of the economics of the ISOs, the position of Comsat and the ISOs in the market for international transmission facilities, Comsat's financial relationship to Intelsat and Inmarsat, and the opportunities and incentives that drive PTT facilities and market access decisions. It would be imprudent to rely on the results of this Study in the deliberations of H.R. 1872.

## ABOUT THE AUTHORS

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INTRODUCING DIRECT ACCESS BY U.S. USERS TO INTELSAT:  
AN ECONOMIC ASSESSMENT

MARIUS SCHWARTZ\*

September, 1997

I. Summary

Introducing direct access by U.S. users to Intelsat capacity evokes superficial appeal when couched as offering users "freedom of choice" to bypass Comsat's "monopoly" over access to such capacity. Closer economic scrutiny, however, suggests that the benefits of introducing direct access at this point are likely to be modest and short-lived, while the costs are likely to be substantial. In particular, attempting to introduce direct access at this time would delay and possibly derail what should be the main goal of U.S. policy towards Intelsat—ensuring a pro-competitive and efficient restructuring of the organization.

As explained in Section II of this paper, the benefits to users from direct access are likely to be relatively small for three reasons:

a) Users in the U.S. already enjoy substantial facilities-based competitive alternatives to Intelsat's space-segment capacity (provided through Comsat) for transmission of international telecommunications and video services. These alternative facilities include other satellite systems and undersea fiber-optic cables—none of which Comsat controls. Today, these alternatives exert substantial competitive discipline on prices for Comsat's space-segment services that account for the bulk of Comsat's Intelsat-related revenue.

b) Comsat's prices and offerings for those services where it is not deemed to face substantial competition are subject to regulatory oversight by the FCC. Even if granted its request to be re-classified as non-dominant, Comsat will remain subject to continued regulatory oversight as a common carrier and required by law to provide access to Intelsat space segment on a non-discriminatory basis pursuant to tariffs filed with the FCC.

c) Unlike many foreign signatories to Intelsat, Comsat does not control any domestic bottleneck facilities needed to provide important satellite services, such as access to the public switched telephone network to complete international calls. Comsat's sole business in this area is in providing space-segment capacity. This is an important distinction between

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\* Professor of Economics, Georgetown University. This analysis was prepared at the request of Comsat, but the views expressed are my own. For helpful background discussions, I wish to thank Jerry Duvall, Walter Hinchman, Charles Oliver, and Hannes Pfeifenberger.

Comsat and most foreign signatories who are full service providers. Thus, direct access in the U.S. would bypass Comsat only for provision of the U.S. half-circuit of Intelsat capacity. In other countries, "direct access" is sometimes equated with bypass of domestic bottlenecks as well.

The benefits of direct access are likely not only to be small but also short-lived, because Intelsat's residual market power—and by extension Comsat's—is likely to diminish further as numerous additional facilities, both cable and satellites, continue to be rapidly deployed. For this reason, the benefits are likely to be virtually negligible if implementing direct access would take considerable time—not an unlikely scenario.

In contrast, Section III explains that the costs of adopting direct access are likely to be substantial:

- 1) Implementing direct access—in a manner that does not entail some customers free-riding on certain Signatory functions now provided by Comsat or reneging on existing contracts with Comsat—could consume significant business and regulatory resources.
- 2) Under direct access, many of the retailing functions and pricing now performed by Comsat in the U.S. would revert to Intelsat. Intelsat enjoys tax exemption and immunities from U.S. antitrust laws and regulation broadly for all its functions. However important these advantages might be, they surely exceed those enjoyed by Comsat. Comsat enjoys no tax exemption, and its immunities are confined to its Signatory (i.e., policy-related) functions and do not cover its commercial functions, which Comsat provides as a regulated common carrier. Thus, replacing Comsat with Intelsat as the conduit to serving end users in the U.S. would reduce U.S. tax revenue and would sever U.S. regulatory oversight over retailing and pricing of Intelsat services in the U.S.
- 3) Most worrisome, embarking on a course of implementing direct access could delay and possibly derail efforts towards what should be the paramount goal in Intelsat reform—moving towards pro-competitive privatization of as much as possible of Intelsat's assets, consistent with addressing concerns of other signatories. Direct access could undermine these efforts in at least two ways: by fragmenting the U.S. voice in Intelsat; or by weakening and distracting Comsat, which would then be less capable of devoting the time and resources necessary to promote U.S. reform initiatives effectively.

## II. Limited Benefits of Direct Access in the U.S.

I am aware of two main arguments for introducing direct access, as some other countries have done: (a) it will directly benefit U.S. users by allowing them to bypass Comsat; and (b) it will bolster U.S. credibility in arguing for a pro-competitive restructuring of Intelsat. This credibility, some argue, is undermined by the U.S. refusal to break Comsat's "monopoly" on access to Intelsat. Regarding point (a), whatever benefits direct access may have brought in other countries, it is critical to recognize that the U.S. situation is very different. These differences also explain why, with respect to point (b), resisting direct access in the U.S. at least until after Intelsat privatization is quite consistent with the U.S. pressing for such a pro-competitive restructuring of Intelsat.

### A. How the U.S. Situation Differs from that in Other Countries

Countries such as the U.K. and Chile have in recent years introduced direct access to Intelsat, allowing entities other than the original signatories to obtain capacity from Intelsat directly through investment in Intelsat; other countries have introduced direct access contractually, without investment.<sup>1</sup> But most of those countries differ from the U.S. in important ways, that make the likely benefits from direct access in the U.S. much smaller.

#### 1. Horizontal Aspect—Competitive Alternatives to Intelsat/Comsat

In other countries, the Intelsat Signatory also typically controls the non-Intelsat facilities for international telecommunications (such as undersea cables), or such alternatives are simply absent. Direct access to Intelsat, by end users (such as broadcasters) or by long-distance carriers wishing to compete with the Signatory, is therefore an important way to rapidly break a *foreign* Signatory's stranglehold over access to international transmission facilities. In contrast, the U.S. is amply served by alternative facilities to those of Intelsat, both undersea fiber-optic cables and separate satellite systems; Comsat owns no interest in these. These alternative facilities exert substantial competitive discipline on most of Comsat's major services.<sup>2</sup> Indeed, one reason why Congress created Comsat was to prevent the existing U.S.

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<sup>1</sup> Testimony of Jack Gleason, Acting Associate Administrator, Office of International Affairs, NTIA, on International Satellite Reform, before the Subcommittee on Communications Committee on Commerce, Science, and Transportation, United States Senate, July 30, 1997 ("*Gleason Testimony*"), p. 4. Other testimony in the same hearings cited later in this paper includes that by: Peter Cowhey, Chief, International Bureau, FCC ("*Cowhey Statement*"); and Steven W. Lett, Deputy United States Coordinator, International Communications and Information Policy ("*Lett Testimony*").

<sup>2</sup> The FCC recently determined that substantial competition exists today for Comsat's full-time video and audio services. See In the Matter of the Application of COMSAT

international carriers from obtaining a similar stranglehold on both competing satellite and cable facilities. Moreover, as a common carrier under the Satellite Act, Comsat already is required to provide non-discriminatory access to the Intelsat system for *all* comers. In essence, the rest of the world is now only seeking to achieve what Congress mandated in the U.S. long ago.

2. Vertical Aspect—Comsat Does Not Control Earth Station Facilities or Access to the Domestic PSTN

In other countries, the Intelsat Signatory is typically vertically integrated into the domestic Public Switched Telephone Network (PSTN), has traditionally charged considerably higher retail rates for international services than the U.S. carriers, and has denied competing carriers access to the PSTN or the right to establish their own earth stations (all traffic must go through the Signatory). By contrast, Comsat is not vertically integrated into the PSTN—it provides only space-segment services. Moreover, under FCC policy, customers in the U.S. are permitted to own and operate their own earth stations, and Comsat provides space segment on an unbundled tariff basis. In addition, the U.S. already provides much more open access to its domestic bottleneck, such as the PSTN, than do other countries.

Thus, direct access in the U.S. would bypass only a very small portion of the vertical pricing chain for international telecommunications services. By contrast, in at least one country where direct access has been credited with producing dramatic reductions in international retail prices, direct access involved also bypass of local bottlenecks (*see* Chile discussion below).

B. Likely Benefits in the U.S. Would Be Modest and Short-Lived

The claimed possible benefits to U.S. users from direct access can be classified into two categories: (a) price reductions from bypassing any residual Comsat market power that is not already effectively constrained by regulation; and (b) increased service options—giving users the flexibility to avoid paying for Comsat “retailing” and other services which they do

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CORPORATION Petition for Partial Relief from the Current Regulatory Treatment of Comsat World Systems' Video and Audio Services, Order, International Bureau, File No. 14-SAT-ISP-97 (Released August 14, 1997) (“1997 Video Order”). The FCC had earlier determined that such competition exists for switched-voice and private-line services (with the exception of thin geographic routes). *See* In the Matter of the Application of Comsat Corporation Petition for Partial Relief from the Current Regulatory Treatment of Comsat World Systems' Switched Voice, Private Line, and Video and Audio Services, Order, 11 FCC Rcd 9622, (Released August 15, 1996) (“1996 Switched Voice Order”). These points are discussed further in Section II.B. of this paper.

not require or would prefer to provide themselves or obtain from Intelsat, or giving users the option to seek from Intelsat additional services which Comsat could not provide. For the reasons outlined above, especially the presence of competition from alternatives to Intelsat, the benefits from introducing direct access are likely to be much smaller in the U.S. than in most other countries.

1. Price Reductions due to Bypass of Comsat

Comsat's revenue from its provision of Intelsat space-segment capacity derives from switched-voice and private-line services (approximately 80%), and video transmission services. Moreover, the bulk of its revenues are derived from sales to large, sophisticated customers such as the major U.S. international carriers, multinational corporations, and the major television networks—customers who are in a good position to seek out competitive alternatives. (For example, AT&T, MCI, and Sprint account for roughly 80% of Comsat's switched-voice and private-line services, and they have powerful incentives to place their international traffic on their own undersea fiber facilities.) The growth of such competitive alternatives to Intelsat/Comsat is documented below.

a. Switched Voice and Private Line Services

In its 1996 *Switched Voice Order* the FCC concluded: "We find substantial competition in the [switched voice and private line] service market. Since 1985, available transmission capacity has dramatically increased on most routes with the introduction of satellite and cable systems that compete with INTELSAT" (¶21).<sup>3</sup> The result of these competitive pressures (Section II.A.1 above) has been a sharp decline in the share of such traffic going through Intelsat/Comsat: from about 70% in 1988 (when the first trans-Atlantic fiber-optic cable became operative) to 34% in 1993 and 25% in 1996.

Moreover, even for the 25% share of U.S.-international traffic that it handles, Comsat collects only a small fraction of the overall retail price (Section II.A.2 above). To see how small, observe that in 1996 Comsat's revenue from switched-voice and private-line services

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<sup>3</sup> The FCC uses the term "space segment" market, but explains: "We interpret this wholesale switched voice and private line market (terms used by the Brattle Report filed by Comsat) as analogous to our space segment market excluding video and audio." (¶ 14.) The emergence of abundant undersea cable capacity to and from the U.S. competing with Intelsat has been an especially potent force: the FCC noted that in 1993 traffic to countries served only by satellites accounted for only 8.45% of total revenues from switched voice services (IMTS) to foreign points by U.S. carriers (¶ 22).

was less than \$200 million.<sup>4</sup> Revenues of U.S. international telecommunications carriers from end users exceeded \$14 billion. Assuming that the mix of traffic going through Comsat/Intelsat yielded roughly the same average revenue to carriers as their overall traffic, the retail revenue from such traffic exceeded \$3.5 billion (\$14 billion x 25%). Thus, Comsat's revenue of less than \$200 million from this traffic accounts for only about 5.7% of the total revenue this traffic generated (\$200 million/\$3.5 billion). As a result, the scope for reductions in the prices of international switched services from implementing direct access to Intelsat in the U.S. is quite limited, even for the portion of traffic still using Intelsat.

In contrast, given the large margins charged by foreign PTTs on international services to end users<sup>5</sup>, and the frequent lack of transmission facilities competing with those of a foreign PTT, much larger price reductions are potentially achievable in those countries by introducing direct access to Intelsat (in order to make available facilities not controlled by the PTT). However—and this is critical—the Signatory/PTT must also be prevented from negating the impact of direct access (such as by refusing to interconnect to the PSTN, or by setting high interconnection charges). In such a case, meaningful “direct access” to Intelsat in the foreign country would really amount to bypassing the Signatory in *both* the space segment *and* the local segment. But in the U.S., numerous carriers already have the access to local networks they need to compete in offering international services.

A case in point is Chile.<sup>6</sup> In 1994, its government authorized several companies to lease satellite capacity directly from Intelsat and to acquire and operate their own earth

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<sup>4</sup> Comsat World Systems' 1996 revenue from all its Intelsat space-segment services, including (in addition to switched-voice and private line) video revenues and net payments from Intelsat (“Intelsat Net”), was \$273 million. The Intelsat Net payments (approximately \$36 million) are from other signatories to Comsat for Comsat's share of ownership in excess of its share of usage. Such payments are irrelevant for our purposes, as they would not be affected by introduction of direct access (or by reclassification of Comsat as non-dominant).

<sup>5</sup> Professor Leonard Waverman (*Global Speak*, p. 28, as cited in *Gleason Testimony*, pp. 11-12) estimates that in 1992, telecommunications carriers' annual charge for a full-time international telephone circuit to end users would have been \$37,500 in the U.S. but \$73,400 in Europe. (Charges in other countries were substantially higher than even in Europe.) On the reasonable assumption that a large part of the differences in retail prices between countries reflects profit margins rather than solely differences in costs of local network facilities, there is far more “fat” to be squeezed out of PTT/signatories abroad than could conceivably be wrung out of Comsat or even Comsat and U.S. carriers jointly.

<sup>6</sup> This discussion draws on Charles M. Oliver, “Analysis of World Trade Organization Agreement on Basic Telecommunications Services and FCC Notice of Proposed Rulemaking on Foreign Participation in the U.S. Telecommunications Market,” memorandum, Dow, Lohnes & Albertson, Washington DC, June 25, 1997, pp. 4-5.

stations. In October 1994, a new law enabled end users to access the long-distance carriers of their choice, and mandated dialing parity and equal terms of interconnection; thus, direct access to Intelsat was accompanied by enhanced access to end-users, bypassing other previously-important bottlenecks. By June 1995, prices for international calls were about 60% lower than before October 1994. But to extrapolate the success of "direct access" in Chile to what would happen in the U.S. obviously makes no sense: in Chile, direct access to Intelsat was accompanied by introduction of "direct access" also to local networks. In the U.S., such local access already exists, at regulated rates; and competing international carriers already have substantial alternative facilities to Intelsat for transmitting international traffic.

b. Video Services

Having found in its *1996 Switched Voice Order* that there was a sufficient basis for granting Comsat regulatory relief for switched voice and private line but not for video and related audio services (collectively, "video services"), the FCC revisited the issue in its *1997 Video Order*. This time it found that the market for full-time video services, which accounts for more than 85% of Comsat's revenue from video services, is substantially competitive to warrant such relief (¶ 2). For example, it cited a Brattle Group study<sup>7</sup> showing that Comsat's share of all international video traffic to and from the U.S. (based on the number of transponders utilized for Comsat's full-time and occasional-use markets, a measure which the FCC acknowledges may overstate Comsat's market share) fell dramatically from 80% in 1993 to 45% in 1996. (¶ 28.) A more disaggregated breakdown of U.S. traffic to and from various geographic regions also revealed a consistent decreasing trend in Comsat's market share—a drop from 83% to 53% for Transatlantic video traffic, 96% to 44% for Transpacific, and 54% to 25% for Latin America. (¶ 29.)

Significantly, the FCC also noted that the broadcast television networks—Comsat's main customers for video services—supported its request for streamlined regulation for full-time video services. (¶ 9.) As further reflection of the competition to Comsat's full-time video transmission services, in June 1997 the networks did not oppose Comsat's motion to be re-classified by the FCC as non-dominant in these services, which would entail even more deregulation than was granted in 1996.<sup>8</sup> Indeed, Brian Knoblock, chairman of the North

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<sup>7</sup> *Competition in the Market for Transoceanic Video Services to and from the U.S.*, Professor Hendrik S. Houthakker and The Brattle Group, Cambridge, MA, October 24, 1996.

<sup>8</sup> All of Comsat's space services are subject to common-carrier regulation by the FCC. The FCC has granted streamlined tariff regulation (e.g., 14-day notice instead of 45 days for filing tariffs, without the need for detailed cost justification and with a presumption of lawfulness) for services where it found substantial competition (see footnote 2). Other services, such as occasional-use video, do not enjoy this streamlined regulation. Comsat has

American National Broadcasting Association, had stressed earlier that the most serious problem for Intelsat users is not a lack of competition to Intelsat but access to markets controlled by foreign monopoly PTTs. He explained that while Comsat may charge U.S. users \$10.50 for a service with an IUC of \$8 per minute of space segment, signatories in some other countries charge \$112 for their half of the same service.<sup>9</sup> Comsat, of course, has no control over the actions of foreign PTTs.

In short, for services accounting for the great majority of its revenues, Comsat already faces substantial competition which disciplines its pricing of Intelsat capacity. And for those services where competition is not deemed sufficient, Comsat's prices are subject to continued regulatory safeguards.<sup>10</sup> For all of these reasons, it is difficult to see how bypassing Comsat via direct access to Intelsat could deliver significant price reductions to users in the U.S.

## 2. Increased Service Options

Even if Comsat's prices cover only approximately its cost of service, users potentially may gain from direct access by being offered more service options: to bypass those Comsat retailing and other functions which they do not desire or feel they can provide better themselves or procure from Intelsat, or to secure from Intelsat new services that Comsat may not be offering. Indeed, the efficiency gains from such expanded options could, in general, be much larger than the gains from forcing down a middleman's margins. The question is whether such gains are likely to be significant in the case at hand.

As a general matter, it is worth noting that "direct access" is far from universal in private distribution arrangements. Some private suppliers do choose to serve certain customer classes directly (such as large customers); but private suppliers also commonly elect to sell only through exclusive distributors, in large part because of economic efficiencies associated with such an arrangement (e.g., from providing a distributor with appropriate incentives to

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recently applied to be treated as non-dominant for all its services. Among other things, "non-dominance" brings further tariff streamlining, such as a 1-day notice period.

<sup>9</sup> "Intelsat Divestiture Debated," *Communications Daily*, March 15, 1995, pp. 3-4.

<sup>10</sup> Even if classified as non-dominant, as a common carrier Comsat will still be required to provide services on a non-discriminatory basis under cost-justified tariffs filed with the FCC and fully subject to FCC complaint procedures if deemed unreasonable by any of Comsat's customers. One should also note that Comsat pledged additional safeguards in its non-dominant petition: to cap its rates for three years; to agree to a 14-day tariff notice period for any rate increases after the three-year cap expires; and to implement uniform pricing for all routes so that users on thin routes share the benefits of competition that Comsat faces on thick routes.

invest in developing the product's quality and reputation, or from reducing the transaction costs of dealing with end users by delegating the retailing functions to a specialist distributor). The jury is still out on whether exclusive distributorships would be the most efficient mode of distribution for Intelsat's satellite services.<sup>11</sup> However, in light of this uncertainty, I am willing to believe there could be some benefits to users from increased options afforded by direct access to Intelsat. But I do not see these benefits being large, for the following reasons.

The increased competition described earlier to most services Comsat provides via Intelsat has already presented users with competitive alternatives. Moreover, this competition has also prodded Comsat to become more efficient as a distributor of Intelsat capacity. In recent years, Comsat has undertaken significant cost cutting, and has become much more responsive to customer demands.<sup>12</sup>

Furthermore, Comsat's position as the sole distributor for Intelsat capacity does not appear to significantly stifle the activities of value-added providers that rely on Intelsat capacity. Companies such as Keystone (now Globecast) obtain Intelsat capacity through Comsat at long-term, bulk rates and, while they might prefer still lower rates, use this capacity successfully to offer value-added services such as occasional-use video.<sup>13</sup> Moreover, Comsat's responsiveness could be improved still further by granting its request for non-dominant status, because the regulatory relief would allow it greater flexibility to customize its offerings and to do so rapidly.

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<sup>11</sup> On one hand, some governments have allowed direct access to Intelsat; but such decisions are often political, and occur in a context different from what applies in the U.S. (see Section A above). Moreover, to fully assess the efficiency of direct access one must wait to see how it copes with difficult longer-run decisions such as securing financing for new investments. On the other hand, some emerging global private satellite systems have opted for exclusive distributors in each country. For example, for mobile-satellite services, the planned Globalstar satellite system has already arranged for exclusive distributorships in over 100 countries, and I understand that Iridium also plans exclusive distributors in each country.

<sup>12</sup> For example, as regards cost cutting, since 1994 Comsat World Systems has undertaken two significant reductions in its workforce. Most recently, Comsat initiated rate reductions for two categories of digital private network services—IBS and VSAT—averaging approximately 8% and 10% respectively. (Comsat News Release, June 16, 1997.) Regarding service quality, in its *1996 Switched Voice Order* the FCC notes: "Keystone and Reuters (Comsat customers) say they have observed Comsat playing 'an increasingly competitive and supportive role in recent years, exhibiting a markedly greater willingness to accommodate the needs and specific objectives of its customers, and exhibiting an increasingly flexible approach in its provision of services.'" (¶ 32.)

<sup>13</sup> Keystone's full-time leases account for about 20% of Comsat's entire full-time video leases, and 60-70% of Keystone's business is occasional-use video.

Finally, the argument that direct access to Intelsat would obviate the need to deal with an "unnecessary middleman," overlooks the fact that Comsat performs various retailing services. Given the general belief (shared by Intelsat, its competitors, and its customers) that Intelsat's intergovernmental structure makes it cumbersome and inflexible, it is hard to see how Intelsat would be a more responsive provider of such services.

### 3. Benefits Would Be Short-Lived

Thus, even if direct access could be implemented swiftly (perhaps through legislation such as that recently proposed by Congressmen Bliley and Markey) the benefits would still be modest, because Comsat already faces substantial competition for most of its major services. Moreover, these benefits would be short-lived because the competition to Intelsat/Comsat from both cable facilities and other satellite systems is increasing rapidly. The international satellite services industry in particular is changing at a dazzling pace, with launches of numerous new satellite systems planned over the next several years

Given these rapid competitive developments, the benefits of direct access could be virtually negligible if implementation takes considerable time. In that case, whatever benefits might be hoped for under today's conditions will have largely been delivered instead by the additional competition—but the costs of establishing direct access will be with us. This, in fact, is not a far-fetched scenario. For example, in 1984 when the FCC last considered direct access to Intelsat in the U.S., the regulatory proceeding took nearly two years to complete even before judicial appeals.<sup>14</sup>

#### C. If Comsat Faces Substantial Competition, Why All the Fuss?

The above analysis might elicit two objections: (1) If Comsat's indeed faces substantial competition, what benefits can Comsat expect from seeking re-classification as a "non-dominant" common carrier and the associated easing of regulation? (2) If direct access truly yields such small and short-lived benefits, why are some users requesting it?

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<sup>14</sup> Regulatory Policies Concerning Direct Access to Intelsat Space Segment for the U.S. International Service Carriers, 97 F.C.C. 2d 296, 312 (1984) ("*Direct Access*"), aff'd. Western Union International, Inc. v. FCC, 804 F.2d 1280 (D.C. Cir. 1986). In fact, it recently took the FCC over two years just to reduce Comsat's public notice tariff requirements from 45 days to 14 days for its switched-voice and private-line services.

1. Comsat's Non-Dominance Request Is Consistent with Lack of Significant Market Power

As the experience of railroads and other regulated industries has amply demonstrated, regulation shackles flexibility—to change prices, introduce new services, etc. For example, in an attempt to restore flexibility, the Staggers Act of 1980 allowed railroads—even where they had market dominance—to negotiate confidential contracts with customers for prices and for types of services. Reflecting the importance of such customized arrangements, today the majority of railroad traffic moves under contracts rather than tariffs (tariffs essentially became used only as “recourse” rates and services).

Conversely, a lack of flexibility can be devastating to a firm. This is particularly true if the firm is hamstrung by regulatory requirements not faced by its competitors, a situation Comsat finds itself when competing with other providers of international telecommunications services. Comsat's competitors are entirely free of common-carrier regulation, are not subject to structural-separation rules for the provision of space and ground segment services, are not rate-base regulated, are not subject to geographic service restrictions, and do not need prior FCC approval to raise debt or equity capital. Thus, there is no inconsistency between Comsat's seeking relief from regulation while also arguing that its market power is limited.<sup>15</sup>

2. Why Then Are Some Customers Supporting Direct Access?

It is unclear just how broad and strong customers' demand for direct access truly is. However, a plausible explanation for why some users are seeking it is that, as with the blind men and the elephant, “*direct access*” means different things to different people. In particular, direct access could be mis-constructed as the right to: (1) obtain Intelsat capacity at prices that do not cover the full costs imposed by the buyer and thus constitute free riding on certain functions provided by Comsat and paid for by all users; or (2) abrogate existing long-term contracts that users have signed with Comsat, so as to avail themselves of better market opportunities that have developed in the interim—a form of post-contractual opportunism.

I am not in a position to quantify these concerns. But there are valid reasons to think the concerns are real. Regarding point (1), as the U.S. Signatory, Comsat World Systems is

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<sup>15</sup> Nevertheless, to the extent one is still worried about granting non-dominant status despite continued oversight under common-carrier regulation, one could impose specific regulatory safeguards for the specific services where Comsat's market power allegedly remains a concern—mainly occasional-use video services and switched voice services on so-called geographic “thin routes.”

obligated to provide certain services.<sup>16</sup> At least some of these are in the nature of "public goods" that benefit users widely. Comsat's operating costs associated with these obligations are not part of Intelsat costs and, thus, are not included in Intelsat's utilization charges (IUC), which some users advocate as the appropriate charges under direct access. Thus, direct access would raise the issue of how to allocate these costs equitably and efficiently among customers.<sup>17</sup> Quite possibly, when some users think of direct access, they are envisioning shifting some of these costs onto others. Whatever the true magnitude of these costs, it is likely that considerable squabbles would ensue over how to allocate them. One should also note that these Signatory-function costs comprise a far larger fraction of Comsat's revenue than they do for vertical-integrated foreign PTTs, a fact which may help explain the willingness of some other countries to allow direct access.

Regarding point (2), my understanding is that Comsat has made non-cancelable, long-term capacity commitments to Intelsat in reliance upon the long-term contracts it has signed to provide such capacity to carriers. Indeed, Comsat entered into these inter-carrier contracts at the behest of the FCC when the FCC decided to eliminate its regulation of cable and satellite traffic loading. Implementing direct access to Intelsat should respect the commitments these carriers have made to Comsat. Without such a safeguard, Comsat would continue to be obligated to purchase capacity from Intelsat but with a smaller traffic base to support those commitments. Such an outcome would not represent good public policy.

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<sup>16</sup> It is obligated to: (1) assume Intelsat investment responsibilities (e.g., respond whenever Intelsat "calls" for capital contributions) and participate in the IUC mechanism; (2) assume Intelsat operating liabilities (e.g., loss of spacecraft and liability for any damage to Intelsat caused by Comsat's operations); (3) participate in Intelsat planning and governance functions to represent U.S. policy interests; (4) provide sales, billing, collection, marketing, market research, customer service, and coordinating functions for many more customers than the number of entities that Intelsat deals with directly; and (5) freely share with Intelsat, other Signatories, and U.S. customers the results of its R&D efforts. See Jerry R. Green and Brattle/IRI, *An Economic Evaluation of Direct Access to the Intelsat System by U.S. Telecommunications Customers*, October 1995.

<sup>17</sup> This issue has parallels in the debate over restructuring of the electricity industry to allow "open access" by power producers to the transmission system. Ensuring that *payments for common costs* of running and maintaining the transmission grid—such as of ancillary services (voltage and frequency control) and transmission losses—are assessed efficiently and equitably on all power producers is accepted as a prerequisite for direct access to the electric transmission grid. It is a complex issue still being worked out. Nevertheless, resolving these issues in electricity may well be worthwhile despite the costs, since competition in generation requires access to the transmission grid and the latter is likely to remain a key bottleneck for a considerable time. In contrast, access to Intelsat facilities for serving the U.S. is not a "bottleneck" of even remotely comparable importance for competing in international satellite services (given the presence of alternative transmission modes like fiber-optic cable and separate satellite systems), and is rapidly becoming even less important.

### III. Drawbacks of Direct Access

The limited likely benefits of direct access are not, by themselves, sufficient reason to oppose it. But the costs are likely to be substantial.

#### A. Business, Administrative, and Regulatory Costs of Establishing Direct Access

Considerable business and regulatory efforts will have to go into devising alternative arrangements to implement direct access while preventing free riding and upholding users' contractual commitments discussed above. Preventing such cost shifting is a pre-requisite to an equitable and efficient introduction of direct access. Assuming the FCC even has the statutory authority to implement such a direct access scheme, addressing these issues in a rulemaking proceeding will be a difficult and lengthy process. Over 200 U.S. users are currently served by Comsat's share of Intelsat's capacity; formulating a regulatory scheme to balance the different needs of this user base under a new access regime will be cumbersome to say the least. Contentious differences between U.S. carrier competitors like AT&T and MCI, and different user groups like video and carrier customers, over who gets access to the capacity available for U.S. use and over the amount to be paid for it (which, after all, will no longer be subject to FCC jurisdiction if Intelsat can serve these customers directly) are sure to emerge quickly.

#### B. Permitting Intelsat to Participate in the U.S. Retail Market

Direct access would allow Intelsat to undertake many of the retailing functions and pricing decisions now performed by Comsat. Intelsat's privileges in the U.S. (e.g., tax exemption) and immunities (e.g., from U.S. antitrust laws and regulations)—however important they might be—well exceed those enjoyed by Comsat. Intelsat enjoys these advantages broadly for all its functions. Comsat is not tax exempt, and its antitrust immunities apply only to its "policy" functions as the U.S. Signatory not to its commercial functions in the marketplace as a common carrier. Therefore, replacing Comsat with Intelsat as the conduit to serving end users in the U.S. market would reduce U.S. tax revenue and would sever U.S. regulatory oversight of retailing and pricing of Intelsat services in the U.S.

#### C. Undermining Efforts to Restructure Intelsat

Perhaps most troublesome, however, focusing on introducing direct access to Intelsat in the U.S. and bypassing Comsat would delay and possibly derail ongoing efforts towards a pro-competitive restructuring of Intelsat. The main goal of U.S. policy towards Intelsat should be competitive privatization of as much of Intelsat's assets as possible, consistent with

addressing concerns of other Signatories. Attempting to introduce direct access in the U.S. would, for several reasons, undermine such efforts.

1. The Competitive Issues Are Access to Foreign Markets and Intelsat's Privileges and Immunities

Intelsat critics, such as PanAmSat and other private satellite systems, argue that Intelsat's status as an intergovernmental organization gives it several artificial advantages, including: immunity from national antitrust laws and regulations; exemption from certain forms of taxation; preferential access to orbital locations and transmission spectrum for satellites; and operational advantages arising from the requirement under Intelsat's Article XIV that operators of new satellites must first consult with Intelsat concerning technical harm it might suffer. (In April 1997, Intelsat's Assembly of Parties voted to eliminate the consultation requirement for economic-harm. *Let's Testimony*, p. 4.) Whatever the importance of these advantages, introducing direct access to Intelsat in the U.S. does nothing to address them in foreign countries and, as explained earlier, aggravates them in the U.S.

Critics also argue, more controversially, that through some of its foreign signatories Intelsat impedes market access to private satellite competitors. The critics are correct that Intelsat's foreign signatories are typically dominant or even monopoly operators of telecommunications infrastructure in their home countries, and often owned by or with close ties to their governments. These critics further allege: (a) that signatories are therefore able to restrict access to their markets to competing satellite systems, by directly denying adequate interconnection with terrestrial facilities (such as to the PSTN) needed for some services, or by pressuring regulators to deny relevant licenses (such as to uplink satellite signals or operate earth stations); and (b) that signatories' participation in Intelsat gives them a powerful incentive to use their powers to restrict market access to competitors (and, by implication, that more services will thereby be adversely impacted the more services Intelsat itself provides).

In fact, the extent of a PTT's incentives to deny access by virtue of its own participation in Intelsat (and even its ability to deny access for certain services such as video) has been grossly overstated by certain competitors such as PanAmSat;<sup>18</sup> there is compelling

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<sup>18</sup> In these discussions, even the term "access" is often defined vaguely. For example, it is often left unclear whether foreign "access" refers to (1) access to foreign countries; or (2) access to foreign end-users. While the former already exists for U.S. telecommunications carriers (in the form of interconnection agreements with foreign carriers), the latter (which is equivalent to the bypass of foreign monopoly PTT signatories) is not typically available even for other Intelsat signatories including Comsat.

evidence that the foreign access problem has been overblown for some time.<sup>19</sup> Moreover, the problem is diminishing in any case as global liberalization of telecommunications continues to make impressive strides, for example, through the EU's commitment to open most of its telecommunications markets, including elimination of legal and licensing barriers by January 1998, and through the February 1996 WTO agreement on basic telecom services.<sup>20</sup>

But two things are clear. First, if there is a genuine competitive problem with Intelsat (as opposed to competitive advantages that derive from efficiencies such as economies of scale of scope), it resides largely in Intelsat's intergovernmental status and in the links between certain foreign countries' Intelsat signatories/PTTs and their governments (on the latter point, see, e.g., *Cowhey Statement*, p. 6). And second, perceptions of such unfair competitive advantages—whether accurate or not—are likely to linger and can be strategically exploited by competitors until anti-competitive intergovernmental privileges are ended and the links between Intelsat's signatories and their foreign governments are loosened. Direct access in the U.S. does nothing to address these concerns.

## 2. The "Cleanest" Solution Is Moving Towards Intelsat Privatization

The U.S. has long argued, and other countries are increasingly accepting, that the most satisfactory way to address Intelsat's alleged anti-competitive advantages, while giving Intelsat increased organizational and operational flexibility to operate in an increasingly competitive environment, is by moving towards at least partial privatization. The ongoing discussions about spinning off some Intelsat assets to a new private entity (dubbed INC, for "Intelsat New Company") are squarely in this vein. And there are growing indications that a successful privatization of INC could lead other countries to consider further privatization of at least parts of the remaining intergovernmental organization. (*Gleason Testimony*, p. 19; *Cowhey Statement*, p. 8.)

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<sup>19</sup> As evidence that access problems are far from overwhelming, consider the FCC's statements in its *1997 Video Order*: "We agree that Comsat benefits from the special benefits that result from its status as a Signatory to INTELSAT. ... However, they have not insulated Comsat from a diminution of its market power in the full-time video services market. ... We note that in the August 1996 Order the Commission found that substantial competition existed in the international switched voice and private line telephone market, notwithstanding Comsat's special benefits. Here also, Comsat has demonstrated the existence of a sufficient level of competition in the full-time video market to merit the streamlined tariff relief sought by Comsat." (¶ 36.)

<sup>20</sup> Indeed, the CEO of PanAmSat recently stated that the "trade agreement earlier this year was another milestone in opening markets to competition." *Satellite Communications*, September 1997, p. 32.

3. Direct Access Could Impede U.S. Restructuring Efforts

Working towards restructuring of an intergovernmental organization like Intelsat necessarily requires a careful balance between prodding and building consensus. Perceptions by other countries of U.S. heavy handedness in Intelsat restructuring could unleash a backlash that would threaten global liberalization of far larger telecommunications (or even other) sectors than the space segments provided by Intelsat.<sup>21</sup> Therefore, high stakes hinge on resolving the Intelsat-restructuring debate in a satisfactory manner. As the U.S. Signatory to Intelsat and the largest shareholder in that organization, Comsat has been working closely with the U.S. government to promote restructuring. While initial progress has inevitably been slow, given the constraints of reforming any international organization, the movement that has been made toward achieving the necessary concessions should not be dismissed lightly. There is growing evidence that restructuring efforts are close to bearing fruit. Introducing direct access to Intelsat in the U.S. would hamper these efforts, for several reasons.

a. Fragmenting the U.S. Voice.

Most obviously, if direct access in the near term results in multiple U.S. signatories or owners in Intelsat, the U.S. voice in Intelsat will be fragmented. The new U.S. entities are unlikely to agree on all details of proposed restructuring—each will have its own interests to pursue and at least some parties' interests will conflict. As a result, progress will inevitably be delayed. It is difficult enough for the U.S. to push for reform when speaking with a unified voice; splitting this voice will surely not help. Even if the U.S. retains Comsat as the sole official "Signatory" while permitting multiple owners through direct access, it is doubtful that owners with a major investment stake will want to be silent on privatization issues.

Serious problems would remain even if a mode of direct access could be devised which left all U.S. votes in the hands of Comsat. For starters, foreign signatories opposing privatization could attempt to throw the U.S. position into even greater chaos by whipsawing different positions among the U.S. direct access entities. Due to conflicting positions among such U.S. entities, the U.S. Signatory, Comsat, is likely to lose its credibility and influence in representing U.S. interests within Intelsat. Moreover, even putting aside such divide-and-conquer tactics by opponents of privatization, having seen Comsat's status within Intelsat

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<sup>21</sup> Intelsat's revenue in 1996 was less than \$1 billion (*Gleason Testimony*, p. 10). By comparison, in 1995 U.S. international telephone service alone accounted for over \$14 billion. As early as 1992, total international telecommunications within OECD countries amounted to over \$35 billion. Although revenue from international satellite services is likely to grow dramatically in the coming years, there is little hard evidence that Intelsat—even with its privileges and immunities—can have a dramatic impact on the state of competition in international satellite services (let alone on competition from other facilities).

dwindle over the years and altered further by direct access, foreign signatories could reasonably doubt Comsat's ability to deliver on U.S. restructuring promises in the future.

The problems created by such a fragmented voice should be obvious. The U.S. considered and rejected having multiple Signatories to Inmarsat precisely for such reasons.<sup>22</sup> And the difficulty of reaching decisions-by-committee is a driving force in Intelsat's own desire to seek a more commercial and coherent decision-making structure for INC.

b. Other Difficulties

Attempting to introduce direct access would throw Comsat into turmoil. As mentioned earlier, Comsat—unlike many foreign signatories such as PTTs or even dominant private operators (as British Telecom)—controls no other telecommunications facilities. Its revenue is relatively small and selling access to Intelsat is its single largest business. The space segment its shareholders have invested in to conduct that business would be at risk if direct access is not implemented properly (see Section II.C above). In contrast, for a firm such as BT, its Intelsat operations are a drop in the bucket.<sup>23</sup> Therefore, even if direct access would yield only a small percentage reduction in prices to end users, it could still have a major impact on Comsat.

This observation is not a plea for charity to Comsat, but for recognizing reality: a Comsat greatly weakened and thrown into turmoil by the rapid introduction of direct access will be distracted and thus less capable to effectively press the U.S. goal of steering Intelsat restructuring in a pro-competitive direction. Such efforts require relentless, time-consuming efforts. It would be naive to expect that Comsat's ability to pursue such efforts—even with

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<sup>22</sup> Charles D. Ferris, Chairman of the FCC, strongly supported U.S. representation through a single private company after multi-carrier ownership of Marisat—the predecessor of Inmarsat—required significant administrative efforts to resolve disagreements even on business matters. (See *International Maritime Satellite Telecommunications*, Hearing before the Subcommittee on Communications, Second Session on S. 2211, "To Provide for the Establishment, Ownership, Operation, and Governmental Oversight and Regulation of International Maritime Satellite Telecommunications Services," Statement of Charles D. Ferris, Chairman, Federal Communications Commission, May 8, 1978, pp. 28-29, 33, 43-44.)

<sup>23</sup> In 1996, Comsat's revenues were about \$1 billion, of which \$273 million came from its Intelsat business. Due to spin-offs of unrelated businesses, Comsat's 1997 revenues are forecast by *Value Line* at \$660 million. By comparison, British Telecom's 1997 revenues are forecast to exceed \$25 billion while its share in Intelsat is only half of Comsat's.

complete goodwill on its part—would remain untouched by efforts to introduce direct access.<sup>24</sup>

In addition, implementing direct access could complicate the move to restructuring Intelsat by creating new financial obligations to U.S. users for Intelsat, which would have to be addressed as part of any asset transfer from Intelsat to INC or any other restructuring.

#### IV. Conclusion

I conclude that direct access at this stage would be a costly “solution” to a rather modest problem. The FCC, in fact, considered direct access in 1984 and rejected it, on much the same grounds.<sup>25</sup> The benefits of direct access are considerably less today, due to the emergence of numerous facilities-based competitive alternatives to Intelsat/Comsat. The costs, however, are likely to be at least as great as before, especially because direct access could delay or derail ongoing attempts to restructure Intelsat.

The main policy issue regarding Intelsat today should be promoting efforts towards restructuring the organization in a way that reduces any anti-competitive advantages—actual *or perceived*—that flow from its privileges and immunities as an intergovernmental organization and from the alleged propensity of certain foreign Signatories’ to restrict access of competing U.S. satellite providers to their home markets by virtue of their own participation in Intelsat or in its future affiliates. Failing to reach a satisfactory resolution to Intelsat restructuring could threaten wide-ranging and very damaging trade disputes between the U.S. and other countries. Against this backdrop, focusing on implementing direct access to Intelsat in the U.S. could impede such restructuring efforts and prove to be a very costly distraction. At this time, therefore, its wisdom is highly doubtful.

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<sup>24</sup> As an aside, the introduction of direct access, especially if pursued in a fashion that does not adequately honor Comsat’s past shareholder investments, could be perceived abroad as expropriation by the U.S. of a private company it has created. Such perceptions would do little to advance U.S. credibility in urging other countries not to engage in opportunistic behavior against private investors.

<sup>25</sup> In its 1984 decision, the FCC concluded that: (1) “very little [would] be gained from [direct access] in terms of cost savings or increased efficiency;” (2) “direct access ... would not be required to preserve fair competition;” (3) direct access “might require significant regulatory involvement to assure Comsat’s receipt of sufficient administrative fees to continue to meet its statutorily-imposed responsibilities;” and (4) direct access “could adversely affect Comsat’s ability effectively to express, promote, and protect the national and foreign policy interests of the United States before INTELSAT” (*Direct Access*, at 317-326).