

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

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

**REPLY COMMENTS OF CABLE & WIRELESS**

Cable & Wireless plc and Cable & Wireless USA (jointly “C&W”), by their attorneys, hereby submit reply comments in response to the Notice of Proposed Rulemaking<sup>1</sup> concerning the Commission’s proposal to permit direct access to the INTELSAT system in the United States.

COMSAT’s lengthy analysis of the Communications Satellite Act of 1962 (the “1962 Act”) has once more failed to demonstrate that it should be the only entity entitled to provide access to INTELSAT. As a number of parties have pointed out,<sup>2</sup> the Commission does indeed have the authority to allow Level 3 access, and even Level 4 access to INTELSAT under the 1962 Act, without the need for additional legislative action. As the comments also make clear, a decision in favor of direct access would not constitute a taking under the U.S. Constitution.

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<sup>1</sup> *Direct Access to the INTELSAT System*, IB Docket No. 98-192, *Notice of Proposed Rulemaking*, FCC No. 98-280 (Oct. 28, 1998) (“NPRM”).

<sup>2</sup> BT comments at pp. 8-17; C&W comments.

Moreover, the cost studies submitted by COMSAT do not support the conclusion that the current rates charged by COMSAT are, in any way, related to COMSAT's justifiable costs in providing access or spectrum management services. Further, the Brattle Group study, submitted by COMSAT as an annex to its comments, fails to provide specific cost data. COMSAT has singularly failed to demonstrate that the costs of providing space segment services, signatory functions and spectrum management services justify a price level between 68 and 250% higher than the INTELSAT UTILIZATION CHARGE ("IUC"), especially when Signatories in other competitive jurisdictions find it possible to offer those services with a minimal or no surcharge.

In the United Kingdom, which boasts one of the most liberal telecommunications markets in the world, the IUC is the price for direct access. Customers that do not wish to have direct access to INTELSAT are free to obtain access through any direct access customer at commercial rates.

The information provided by COMSAT does not allow participants in this proceeding to determine whether COMSAT's revenues from providing INTELSAT access cross-subsidize its other businesses. These sorts of potential "conflict of interest" problems associated with an unreformed role for COMSAT will only increase if the planned merger with Lockheed Martin is approved. It is noteworthy that of all the parties who submitted comments in this proceeding, only COMSAT, PanAmSat and Lockheed Martin support preserving COMSAT's monopoly on access to INTELSAT. As a potential merger partner for COMSAT, Lockheed Martin has every interest in ensuring that COMSAT's revenue stream from monopolistic access to INTELSAT's space segment is preserved.

COMSAT's argument that its monopoly should be maintained to capture the revenue destined for INTELSAT for taxation and to prevent distortion of competition is unconvincing. While it is true that tax-exempt status may give INTELSAT an unfair advantage over other satellite capacity providers, C&W does not believe that the efficient

policy response is to sustain a taxable organization whose value is otherwise questionable. The effect of COMSAT's role in this regard is to increase tax costs (which are passed on to users) over what they would have been if INTELSAT were taxable, as COMSAT revenues far exceed IUC revenues. C&W believes that the more efficient way to resolve this problem is not to maintain outdated institutions, but to move quickly to privatize INTELSAT. COMSAT has also failed to prove the significance of the competitive advantage INTELSAT might achieve in the interim period between introduction of direct access and privatization. C&W believes that any such advantage is likely to be small, at best.

With regard to access pricing, although access priced at today's IUC levels may not allow COMSAT to earn an adequate return given its current cost base, COMSAT has not provided enough data so that the Commission may establish whether those costs are justifiable for the services currently provided; and because the services currently provided by COMSAT may not be necessary for direct access users, their associated costs are irrelevant.

Further, COMSAT's concern that, given the structure of INTELSAT's ownership, Level 3 direct access would lead to below-cost pricing of IUCs is unfounded. COMSAT argues that, because foreign Signatories are both retail service providers and investors, they are more willing to entertain non-cost based pricing of IUCs because any loss can be made up with increased margins on their retail business. Thus, when US carriers enter as Level 3 participants they will successfully lobby down the IUC, disadvantaging COMSAT, which has an insignificant retail business.

There are a number of problems with this argument. First, foreign Signatories would be indifferent to the below-cost pricing of IUCs if it could be assured that lower costs would not be passed through to retail pricing. In an increasingly competitive world, there is no such assurance. Second, assuming for the sake of argument that foreign Signatories are indifferent to below cost pricing, why have the significant number of

Level 3 participants in other countries not been able already to effect the drop in return that COMSAT fears?

C&W does not deny that COMSAT faces a certain amount of exposure in having an ownership share disproportionate to usage. The degree of that exposure, going forward, however, depends on many factors including how the access charge for Level 3 is structured and how INTELSAT is privatized, but is, in any case, exaggerated in the COMSAT submission.

C&W agrees with and fully supports the position of BT North America (“BTNA”) in this proceeding. As the UK Signatory and formerly the only entity with legal access to INTELSAT, BT is in the best position to comment on the impact of the introduction of direct access in a competitive market from the point of view of an incumbent. Yet BT, the entity with the most to lose from direct access in its own home market, describes the introduction of direct access as permitting “BT and all other Level 4 users [to] compete on a level playing field”<sup>3</sup> and having “reduced costs of INTELSAT access in the U.K. far below equivalent charges in the U.S. and significantly increased competition in the U.K. satellite market”.<sup>4</sup> In fact, BT goes so far as to say that its “actual experience in the direct access environment [...] is completely contrary to Comsat’s assertion that direct access would result in increased regulatory and administrative costs” because BT “does not incur any “marketing/sales”, “operational” [...] “transactional” costs or taxes [...] or costs or satellite launch and insurance.”<sup>5</sup>

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<sup>3</sup> BT comments at 2

<sup>4</sup> *Id.*

<sup>5</sup> BT comments at 5.

Moreover, BT asserts that that the costs associated with its Signatory functions are “inconsequential.”<sup>6</sup>

C&W and its customers have been among the main beneficiaries of the liberalization of access to INTELSAT in the United Kingdom. As a result of direct access, C&W has been able to better respond to the needs of its customers, add flexibility to its operations, and reduce its prices, all to the ultimate benefit of telecommunications services users in the United Kingdom. As pointed out by several commenters, COMSAT is in fact itself is another one of the main beneficiaries of direct access in the United Kingdom, through its affiliate, Comsat General (U.K.). It is contradictory at best for COMSAT to argue that, while direct access in the United Kingdom by COMSAT makes the U.K. market more competitive to the benefit of local telecommunications service users, the reverse is true in the United States because, there, an increase in competition for space segment access would actually harm consumers. In reality, the high mark-up charged by COMSAT and the fact that its tariff offering is limited to those INTELSAT services it finds advantageous to offer to its customers restricts competition and the ability of all U.S. carriers to respond to the needs of their customers efficiently and under competitive conditions.

As MCI WorldCom points out, COMSAT is incorrect in arguing that it is unable to charge monopoly or near-monopoly prices for its circuits because there is high competition in as much as 85% of its routes by virtue of the existence of transoceanic cables and separate satellite systems. Although there are indeed a number of transoceanic cables that serve numerous international points and separate satellite systems that arguably provide almost global coverage, INTELSAT remains the main means of communication or the only viable one, for a large number of destinations, and is likely to remain so for the foreseeable future. Satellites offer a unique ability to communicate

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<sup>6</sup> *Id.*, at 6.

with hard-to-reach locations where cable is not available, there is insufficient cable capacity, or satellite capacity is needed as a backup for cable. Moreover, as MCI WorldCom further points out, a majority of foreign telecommunications companies prefer using INTELSAT links with their U.S. correspondents, as they already have good quality INTELSAT earth stations into which they have invested a considerable amount of capital.

In conclusion, COMSAT has failed to demonstrate that the Commission lacks the authority to allow direct access to INTELSAT under U.S. law. Accordingly, the Commission should confirm its tentative conclusion that direct access to INTELSAT is on the public interest and should adopt the appropriate order without delay.

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**CERTIFICATE OF SERVICE**

I, Kimberly E. Thomas, do hereby certify that the foregoing REPLY  
COMMENTS OF CABLE & WIRELESS were served by hand delivery on this 29th day  
of January, 1999, upon the following:

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