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January 29, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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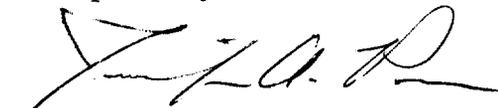
**Re: In the Matter of Direct Access to the INTELSAT System,  
IB Docket No. 98-192, File No. 60-SAT-ISP-97**

Dear Ms. Salas:

GE American Communications, Inc. ("GE Americom"), by its attorneys and pursuant to the Commission's Notice of Proposed Rulemaking in IB Docket No. 98-192, released October 28, 1998 (FCC 98-280), hereby submits an original and four copies of its reply comments in the above-referenced proceeding.

Please date stamp the additional copy of this filing and return it with our messenger. If you have any questions regarding this filing, please contact the undersigned.

Respectfully submitted,



Jennifer A. Purvis

Enclosures

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**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  
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**REPLY COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.**

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January 29, 1999

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
	)	IB Docket No. 98-192
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INTELSAT System	)	

**REPLY COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.**

GE American Communications, Inc. ("GE Americom"), by its attorneys, hereby responds to the comments filed pursuant to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding. 1/

**SUMMARY**

GE Americom has strongly supported the Commission's tentative conclusion that direct access to INTELSAT is in the public interest. We agree that direct access can be an important first step toward the creation of a more competitive market for international satellite services. 2/

Indeed, this docket is marked by remarkable consensus -- with the predictable exceptions of Comsat Corporation ("Comsat") and Lockheed Martin

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

2/ *See* Comments of GE American Communications, Inc., IB Docket No. 98-192 (filed Dec. 22, 1998) ("GE Americom Comments"). Citations to the comments of other parties refer to their initial comments filed in this docket unless otherwise indicated.

Corporation ("Lockheed"), Comsat's corporate suitor. All other satellite operators and customers are united in their view that direct access is authorized by law, is in the public interest, and should be implemented now. The record includes clear evidence from other countries that direct access reduces prices and benefits consumers.

Comsat and Lockheed raise a plethora of argumentation in an attempt to preserve the Comsat monopoly. GE Americom will respond briefly to some of these points below. In large measure, however, the Comsat arguments already have been anticipated and rebutted in the initial comments submitted in this proceeding last month.

GE Americom's support for direct access assumes that new anticompetitive problems will not be allowed in the back door at the same time as Comsat's monopoly is swept out the front. Comsat must not be allowed to impose new access surcharges on its competitors and customers. That outcome would simply rearrange the method by which Comsat captures its monopoly rents, while doing nothing for competition.

Assuming that these matters are resolved, GE Americom sees no benefit to delaying direct access pending either amendment of the Satellite Act or Intelsat privatization. Creation of direct access in no way eliminates the need for a pro-competitive Intelsat restructuring. Nevertheless, properly done, direct access is a positive step that the FCC can take now while, we hope, the broader Intelsat

issues are addressed over the next several years. We urge the Commission to approve direct access as soon as possible.

**I. COMSAT HAS NO LEGAL RIGHT TO PRESERVATION OF ITS MONOPOLY.**

Contrary to the claims of Comsat/Lockheed, direct access is not barred by the Satellite Act of 1962 ("Satellite Act" or "Act"). <sup>3/</sup> The record here strongly supports the Commission's tentative conclusion in the *NPRM* that it is free to order direct access upon a public interest finding. See *NPRM* at ¶25. For example, AT&T demonstrates that "[t]he Commission possesses clear, express authority under the Satellite Act to permit direct access to the INTELSAT system." AT&T Comments at 2. Sprint finds that "[n]othing in the terms of the statute confers on Comsat the exclusive role of providing access to the INTELSAT system." Sprint Comments at 3. Cable & Wireless similarly explains that "[t]he Satellite Act does not confer a permanent Comsat monopoly over access to the INTELSAT system," and that "nothing in the Satellite Act . . . suggests that Comsat is assigned the permanent role of sole intermediary between INTELSAT and its U.S. users." Cable & Wireless Comments at 6.

Desperate to preserve its monopoly, Comsat attempts to paper the record with a lengthy legal appendix that purports to parse the Satellite Act and its legislative history. Comsat's arcane arguments, however, are nothing but a smoke screen. In the end Comsat simply fails to demonstrate any statutory requirement

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<sup>3/</sup> See 47 U.S.C. § 701, *et seq.*

that Comsat be the exclusive source of access to Intelsat. 4/ For example, Comsat relies heavily on a provision of the Satellite Act stating that “[U.S.] participation in [INTELSAT] shall be in the form of a private corporation.” 47 U.S.C. § 701(c). Comsat claims that the Act’s use of the singular word “a” shows that only one entity, Comsat, is entitled to direct access. 5/ Comsat further argues that because the Act “in like terms and in the same subsection” authorizes Comsat to “furnish, for hire, channels of communication,” there is no need to further specify that Comsat is the only entity authorized to engage in such action. 6/

These arguments are identical to the ones made by Comsat in the *Comsat Non-Dominant Proceeding* 7/ and have already been tentatively rejected by the Commission here. *NPRM* at ¶¶ 26-30. Put simply, the fact that Congress authorized the creation of Comsat to act as the initial U.S. signatory to Intelsat in no way precludes authorization of other entities to access Intelsat space segment directly.

Comsat’s next legal argument is equally defective. Comsat asserts that approval of direct access would violate the Fifth Amendment’s takings

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4/ See *NPRM* at ¶ 25; see also GE Americom Comments at 4-5; MCI Comments at 4-6; GlobeCast North America Comments at 2.

5/ Comsat Comments at 16-17, Appendix I at 45.

6/ *Id.* at 18, Appendix I at 46.

7/ *In the Matter of Comsat Corporation Petition Pursuant to Section 10(c) of the Communications Act of 1934, as Amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, File No. 60-SAT-ISP-97, *Order and Notice of Proposed Rulemaking*, FCC 98-78 (rel. Apr. 28, 1998).

clause. 8/ However, as the Commission already has noted, this claim fails because Comsat has no underlying right to expect an exclusive position with respect to Intelsat access. 9/ Admittedly Comsat has benefited from the Commission's failure to authorize direct access in the past. Comsat's good fortune in that regard has been consumers' loss. But Comsat cannot bootstrap this temporary de facto monopoly into a constitutional takings claim now that the Commission finally is prepared to introduce direct access. Quite the contrary, Comsat has been on notice -- both through the Act and through the Commission's prior consideration of direct access -- that one day its monopoly might end. That day should be now. 10/

Comsat's final refuge is to argue that, even if direct access could be authorized, it is not in the public interest. For instance, Comsat argues that direct access would distort the market for satellite services, delay or skew INTELSAT privatization efforts, and produce *de minimis* benefits to users. See Comsat at 61-73. Comsat further claims that direct access is not necessary because customers already have an abundant array of service options from which to choose (*e.g.*, transoceanic cable, satellite providers, other facilities-based competitors).

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8/ See Comsat Comments at 35-42, Appendix II.

9/ NPRM at ¶ 32

10/ Other commenters agree that direct access would not implicate constitutional issues. See, *e.g.*, MCI WorldCom Comments at 7-8; AT&T Comments at 5-7. Even if Comsat had a property interest in exclusive access, AT&T argues, direct access would not constitute a "physical invasion" or have the "requisite economic impact" on Comsat so as to become an unconstitutional taking. *Id.* at 7-10. GE Americom agrees.

Once again, these arguments already have been anticipated and fully rebutted in the initial comments -- largely because Comsat has made them many times before. 11/ As GE Americom and others have shown throughout this proceeding, direct access will increase competition, eliminate Comsat's ability to charge monopoly rates for INTELSAT space segment, and result in overall savings to both carriers and users. 12/ It is therefore abundantly clear that, in addition to being authorized by the Satellite Act, direct access is vital to the public interest and should be implemented now.

**II. COMSAT SHOULD NOT RECEIVE REGULATORY PROTECTION FROM THE COMPETITIVE EFFECTS OF DIRECT ACCESS.**

Comsat's alternative argument is that it should receive regulatory protection from the competitive effects of direct access -- through rate increases and in particular through a "signatory surcharge" that would be imposed on other parties obtaining direct access from Intelsat. This is not surprising; Comsat predictably would want to be sheltered as long as possible from the real world of full marketplace competition. However, Comsat neither requires nor deserves these "sugar plums." From a consumer perspective, signatory surcharges are tantamount to taking back with one hand the competitive benefits given by the other.

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11/ See, e.g., Reply Comments of Comsat Corporation, File No. 60-SAT-ISP-97 (*Comsat Non-Dominant Proceeding*).

12/ GE Americom Comments at 2-3; Ellipso Comments at 5; AT&T Comments at 11-13.

Comsat contends that the same rationale that prompted the Commission to reject direct access in 1984 applies today; namely, that the economics of serving as Signatory to INTELSAT would create significant expenses that could only be adequately recovered from Comsat's rate base. Comsat at 46-48. Direct access would therefore, according to Comsat, require a mark-up in the INTELSAT Utilization Charge ("IUC"), and prompt Comsat to implement a surcharge as high as 45% to recover its direct access-related costs. Comsat at 82-83, Appendix III at 22.

The experience of commenters with exposure to direct access in other countries belies Comsat's assertion. British Telecom, for example, has had "actual experience in the direct access environment" for almost five years, and has found no need to mark-up its rates or to implement special surcharges to recover costs relating to its Signatory functions. 13/ In fact, even before British Telecom implemented direct access in the U.K., it only added a 7% surcharge to the IUC to recover costs it incurred in placing orders. *Id.* at 3-4. This is dramatically below the 68% average mark-up currently charged by Comsat, and far more reasonable than the 45% surcharge Comsat claims it should be allowed to impose if direct access is implemented.

British Telecom also points out that Comsat's proposed justification for its mark-up or surcharge is patently unreasonable. *Id.* at 5-6. According to Comsat, "[a] direct access surcharge over the IUC would be needed to make up the

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13/ BT North America Comments at 5-6.

shortfall in IUC return and to allow Comsat to recover additional expenses (including ‘top-off’ insurance and statutorily-required Signatory functions) that it would continue to incur on behalf of direct access customers.” Comsat Appendix III at 22. This explanation is similar to the one presented by Comsat in earlier years. *See NPRM* at ¶ 47. British Telecom explains, however, that its Signatory status in the U.K. does not require it to incur any of “the costs of satellite launch and insurance” or any other “marketing/sales, operational, or transactional costs or taxes.” BT North America Comments at 5. Comsat’s justification for requiring a mark-up or surcharge is therefore suspect.

Like British Telecom, Cable & Wireless has experienced direct access in the U.K. and vouches for its cost-related benefits. *See Cable & Wireless Comments* at 2. According to Cable & Wireless, the benefits of direct access “were immediate and dramatic.” *Id.* at 2. They “streamlined processes for dealing with INTELSAT, [afforded] greater control over the quality and variety of . . . satellite services . . . and [produced greater flexibility] in responding to the needs of . . . customers.” *Id.* Cable & Wireless also points out that Commission precedent prevents Comsat from being able to recover “embedded or opportunity costs” through special surcharges, lest direct access lead to rates that would “stifle the very consumer benefits that competition is intended to produce.” 14/ Cable &

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14/ Cable & Wireless at 4. Cable & Wireless points out that the Commission’s *Local Competition Order* correctly rejected as anti-competitive the notion that an incumbent carrier should be permitted to charge its competitor rates that ensure the same level of monopoly profits as before the development of competition. *Id.* *See also In the Matter of Implementation of Local Competition Provisions of the*

Wireless further clarifies that special mark-ups are not needed in light of the fact that Comsat is afforded a reasonable rate of return on its investment in INTELSAT. *Id.* at 4.

GE Americom strongly agrees with all of these points. Comsat should be forced to compete through direct access, not protected from competition.

### **III. DIRECT ACCESS SHOULD BE IMPLEMENTED PENDING INTELSAT PRIVATIZATION.**

Comsat and Lockheed raise another red herring in their arguments against direct access, contending that it will hamper or delay INTELSAT privatization efforts. Comsat Comments at 76-77; Lockheed Comments at 13-14. For example, Lockheed states that direct access will have a “deleterious impact on the ongoing efforts of the United States Government . . . to foster a pro-competitive privatization of INTELSAT.” Lockheed Comments at 14. Comsat, taking the argument one step further, claims that given the pending privatization of INTELSAT, the potential benefits of direct access would be of short duration and not worth the costs direct access would impose on carriers. Comsat Comments at 76-77.

First of all, it goes without saying that the lack of direct access has not promoted a more competitive Intelsat in the past; it has simply advantaged Comsat. Indeed, Comsat’s core argument is self-serving and ultimately absurd. Comsat

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*Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, 15859 (1996).

alleges that direct access somehow will lead Intelsat to reduce IUCs to below cost levels because such rates would benefit both non-Comsat U.S. direct access purchasers, and other Intelsat Signatories who will be willing to suffer losses on their Intelsat investment and make up the difference on other services revenue. Under this theory, direct access users will stop pushing for privatization and momentum for privatization will falter. 15/ Perhaps it is sufficient for GE Americom to state that, as a far stronger supporter of Intelsat privatization than Comsat, we do not find this theory credible in the least. Intelsat operations will not be affected by how many or how few parties have direct access in the United States.

Comsat also argues that implementation of direct access will “distract” Intelsat and draw away management resources that would otherwise be spent on privatization. 16/ This argument is as absurd as the last. Intelsat accommodates direct access today. It can easily accommodate additional purchasers pursuant to favorable Commission action here.

In the end, GE Americom believes that direct access will not slow down the privatization of Intelsat at all. Direct access does not affect how Intelsat provides satellite capacity. The only question is whether parties will no longer be forced to go through Comsat to obtain such capacity, capacity that they already use today. In that sense direct access is neutral to the operations of Intelsat itself.

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15/ See Comsat Comments, Appendix III at 4, 18-21.

16/ See *id.*, Appendix III at 20-21.

Again, GE Americom is a strong supporter of an effective, pro-competitive Intelsat privatization. With a meaningful privatization, international satellite service consumers will be assured the same innovation and lower costs that have followed from the Commission's "Open Skies" policies here in the United States, and that characterize this nation's open market policies under the WTO Basic Services Agreement.

But the question here is whether continuation of the Comsat monopoly will foster a faster or more complete privatization. GE Americom has concluded that it will not, and hence that there is no reason to delay a policy change that is clearly pro-competitive. If anything, this reduction in the Comsat monopoly position should be further evidence of the United States commitment to a full competition with respect to international satellite services.

## CONCLUSION

For the reasons stated above, the Commission should implement direct access immediately, prevent Comsat from raising its rates or establishing a

surcharge to recover its alleged Signatory-related costs, and take further actions to ensure fully competitive international telecommunications.

Respectfully submitted,

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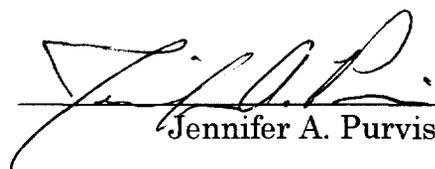
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January 29, 1999

**CERTIFICATE OF SERVICE**

I, Jennifer A. Purvis, with the law firm of Hogan & Hartson L.L.P., hereby certify that on this 29th day of January, 1999, a copy of the foregoing Reply Comments of GE American Communications, Inc. was hand delivered and sent by U.S. mail, first class, postage prepaid, to each of the parties listed below.

  
Jennifer A. Purvis

Dated: January 29, 1999

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