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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Direct Access to the
INTELSAT System

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)

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

REPLY COMMENTS OF AT&T CORP.

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SUMMARY

The comments overwhelmingly support the Commission's analysis of the key issues in this proceeding, both as to the proper interpretation of the Satellite Act, and as to the policy judgments the Commission reached in its *Notice of Proposed Rulemaking*.

On the core question of the Commission's authority, numerous commenters support the Commission's tentative conclusion that it has the authority under the Satellite Act to order at least Level 3 direct access to the INTELSAT system. As AT&T demonstrated in its comments, section 201(c)(2) of the Satellite Act (47 U.S.C. § 721(c)(2)) expressly grants the Commission the authority to provide common carriers with direct access to the INTELSAT system. Although Comsat claims that section 721(c)(2) merely calls for *Comsat* to provide nondiscriminatory access to the system, that is not what Congress wrote. Instead, Congress drew a careful distinction between carriers' rights and obligations with respect to the *INTELSAT system* and the rights and obligations of *Comsat* in particular -- a distinction made clear by comparing section 721(c)(2) and section 251 of the Communications Act -- and determined that all authorized users should have access to "*the communications satellite system*," not to Comsat.

Further, as the Commission, AT&T, and numerous other commenters have pointed out, nowhere in section 735 did Congress employ the language of exclusivity. By contrast, the only provision of the Act that does appear to speak in exclusive terms is section 701(c), which provides, *inter alia*, that "United States participation in the global system shall be in the form of a private corporation." The term "participation," however, is not defined in the Act -- and is certainly not self-defining. It has at least two reasonable interpretations. On the one hand, it may well mean, as British Telecom ("BT") urges, that Comsat is the sole participant in INTELSAT on behalf of the U.S. *government*, not on behalf of the U.S. communications

industry. On the other hand, it may be reasonable for the Commission to conclude that Congress' designation of Comsat as the vehicle for U.S. "participation" in INTELSAT makes Comsat the only U.S. entity authorized by law to share in the ownership and operation of the INTELSAT system. The Commission, however, need not resolve this issue in this proceeding. Whether or not the term "participation" encompasses ownership and operation of INTELSAT, the Commission has the undoubted authority to order Level 3 access to INTELSAT.

Nor does the "legislative history" relied on by Comsat support its claim that the Commission lacks statutory authority to grant direct access to carriers other than Comsat. Comsat's comments contain no reference to the relevant committee reports, which (aside from the statutory language itself) are the most persuasive indicia of *congressional* "intent" in enacting a statute. Unable to find support for its position in authoritative legislative history, Comsat instead has concocted its own version of "legislative history" by selectively quoting and misquoting nonauthoritative witness statements, offered during committee hearings, that neither support Comsat's position nor accurately represent the record. Accordingly, Comsat's arguments in this regard should not deter the Commission from implementing its clear statutory authority to grant Level 3 direct access to U.S. carriers other than Comsat.

The comments also amply support the Commission's rejection of Comsat's takings arguments. As the Commission correctly recognized in the NPRM, Comsat's claim that Level 3 access would breach the "regulatory contract" between Comsat and the United States is entirely dependent on Comsat's claim that the Satellite Act grants it an exclusive franchise over access from the U.S. to the INTELSAT satellite system. Because Comsat's exclusivity claims are demonstrably false, it has no contractual right to exclusive access, and its breach of contract claim must therefore fail. Comsat's "regulatory taking" argument also must fail because, even if

the Commission permitted Level 3 and/or Level 4 access, Comsat would not suffer the “deep financial hardship” that is necessary to produce a taking. As the Commission has recognized, Comsat and its shareholders will continue to have a reasonable opportunity to earn a fair return under a direct access system, and there can thus be no taking.

Granting direct access to the INTELSAT system will also advance the public interest. Indeed, no one disputes AT&T’s demonstration that, by accessing INTELSAT directly, carriers will avoid the mark-up costs associated with Comsat charges, and will obtain faster and more flexible provisioning. Although Comsat nevertheless persists in claiming that U.S. consumers would actually be better off under a system of monopoly provision of satellite communication channels than in a competitive environment, Comsat’s unsupported and self-serving claims that monopoly is better than competition not only fly in the face of INTELSAT’s own assessment of direct access, they also are belied by the empirical evidence in the record.

Finally, the comments overwhelmingly confirm that Comsat is not entitled to a “surcharge” over and above the IUCs for the costs it allegedly will incur in carrying out its Signatory functions under a direct access regime. In the U.K., such costs have been found to be *de minimis* -- less than the administrative costs incurred in calculating them. Comsat has utterly failed to explain why a different result is warranted in the United States.

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REPLY COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T") hereby submits these Reply Comments in response to the Notice of Proposed Rulemaking¹ concerning the Commission's proposal to permit direct access to the INTELSAT system in the United States.

INTRODUCTION

The commenters generally support the Commission's tentative conclusion that it should order at least Level 3 direct access to the INTELSAT system. As shown in section I, there is widespread agreement that the Commission has the statutory authority to grant at least Level 3 access to the system, and nothing in the legislative history undermines that conclusion. Section II demonstrates that the commenters support the Commission's rejection of Comsat's takings arguments, and section III demonstrates that granting direct access to the INTELSAT system will tangibly and materially advance the public interest. Finally, section IV shows that the comments overwhelmingly confirm that Comsat is not entitled to a "surcharge" over and above the IUCs for the costs it allegedly will incur in carrying out its Signatory functions under a direct access regime.

¹ Notice of Proposed Rulemaking, IB Docket No. 98-192, File No. 60-SAT-ISP-97 (rel. Oct. 28, 1998), FCC 98-280 ("NPRM").

ARGUMENT

I. THE COMMISSION HAS UNDOUBTED AUTHORITY TO ORDER LEVEL 3 DIRECT ACCESS TO INTELSAT.

Numerous commenters support the Commission's tentative conclusion that it has the authority under the Satellite Act to order at least Level 3 direct access to the INTELSAT system.² Comsat, however, continues to maintain that Congress paradoxically chose "to provide for the *widest possible participation* by private enterprise," 47 U.S.C. § 701(c) (emphasis added), by granting Comsat the *exclusive* right to purchase channels of communication from INTELSAT. Comsat at 14-23. Comsat's farfetched arguments should be rejected, both because they are contrary to the plain language of the statute, and because they find no support in the statute's legislative history.

A. The Text Of The Satellite Act Gives The Commission Ample Authority To Order Level 3 Direct Access, Irrespective Of Whether The Commission Decides To Allow Level 4 Access As Well.

As AT&T demonstrated in its comments (at 2-3), section 201(c)(2) of the Satellite Act (47 U.S.C. § 721(c)(2)), expressly grants the Commission the authority to provide common carriers with direct access to the INTELSAT system. In broad and unqualified language, that section authorizes the FCC to "[1] insure that all present and future authorized carriers shall have nondiscriminatory use of, and equitable access to, the communications satellite system . . . under just and reasonable charges . . . and [2] regulate the manner in which available facilities of the system and stations are allocated among such users thereof." 47 U.S.C. § 721(c)(2) (emphasis

² Cable & Wireless at 6-10; BT at 8-14; GE Americom at 3-7; Networks at 14-18; MCI WorldCom at 3-9.

added). The term “authorized carrier” is likewise defined broadly to include any “communications common carrier which has been authorized by the Federal Communications Commission . . . to provide services by means of communications satellites.” 47 U.S.C. § 702(7). Section 721 thus clearly authorizes the Commission to ensure not only that all carriers obtain nondiscriminatory “use” of the INTELSAT system, but also that they obtain “*access*” to the “communications satellite system” itself -- *i.e.*, to INTELSAT. In fulfilling this role, the Commission is similarly empowered by that section to “regulate the manner in which available *facilities of the system* . . . are allocated among such users.” 47 U.S.C. § 721(c)(2).

Because the language of section 721 is so clear in giving the Commission the authority to mandate direct access, Comsat is forced to ignore the words that Congress used. For example, Comsat claims that section 721(c)(2) merely “calls for *Comsat* to provide ‘nondiscriminatory access to the system’,” and thus forecloses the Commission’s ability to mandate direct access by carriers themselves. Comsat at App. 1, p. 53 (emphasis added). But that is not what Congress wrote. Nowhere in section 721(c)(2) is there any mention of the “corporation,” *i.e.*, Comsat. Nor is there any statement suggesting that the Commission’s authority to ensure “access to the system” must be exercised only through Comsat.

This conclusion -- that section 721(c)(2) does not require that only Comsat provide direct access -- is buttressed by a comparison with section 251, that deals with “access” to local exchange facilities. In stark contrast with section 721(c), which authorizes the Commission to require nondiscriminatory access to the “system,” section 251 authorizes the FCC to ensure that “incumbent local exchange *carriers*” provide “nondiscriminatory access to network elements.” 47 U.S.C. §§ 251(c)(3), (d)(1) (emphasis added). If Congress had intended that all access by U.S. carriers to the INTELSAT system be had only through Comsat, Congress could easily have

drafted section 721(c) in a manner parallel to section 251: it could have directed the FCC “to insure that the *corporation* created under this Act [*i.e.*, Comsat] provide nondiscriminatory access to the system.” But that is not the formulation Congress chose in section 721(c), which addresses access to the INTELSAT “system.” The difference between the language in section 251 and the language Congress actually used in section 721(c) strongly indicates that the Commission has the authority to order direct access.

Congress’ careful distinction between carriers’ rights and obligations with respect to the *INTELSAT system* and the rights and obligations of *Comsat* in particular is likewise reflected in section 701(c). Whereas Congress expressed the policy of the United States that “*the corporation* created under this [Act] be so organized and operated as to maintain and strengthen competition” and that “the activities of *the corporation* . . . be consistent with the Federal antitrust laws,” in the very same subsection Congress expressed its “intent . . . that all authorized users shall have nondiscriminatory access to *the system*.” 47 U.S.C. § 701(c) (emphasis added). In short, Congress understood the difference between authorizing access to the system and imposing duties on Comsat, and section 721(c) clearly does the former.

In the face of this language, Comsat is reduced to relying upon two highly inferential arguments based upon other provisions in the statute. First, Comsat claims that, because section 735(a)(2) grants it the authority to “furnish, for hire, channels of communication” on the INTELSAT system, the Act implicitly denies that authority to all other carriers. Second, Comsat claims that the Commission could not reasonably read Comsat’s authority under section 735(a)(1) to “own” and “operate” INTELSAT as exclusive without also concluding that the authority to “furnish, for hire, channels of communication” must also be exclusive. Comsat at 17-18. Neither argument has merit.

As AT&T and numerous commenters pointed out, nowhere in section 735, which sets forth Comsat's powers, did Congress employ the language of exclusivity. Section 735(a) provides:

In order to achieve the objectives and to carry out the purposes of this chapter, the corporation is authorized to --

- (1) plan, initiate, construct, own, manage, and operate itself or in conjunction with foreign governments or business entities a commercial communications satellite system;
- (2) furnish, for hire, channels of communication to United States communications common carriers and to other authorized entities, foreign and domestic; and
- (3) own and operate satellite terminal stations when licensed by the Commission under section 721(c)(7) of this title.

47 U.S.C. § 735(a). Section 735(a)(2) thus merely "authorizes" Comsat to furnish for hire channels of communication. It nowhere prohibits other carriers whom the Commission might authorize in the future from doing so as well.

Thus, Comsat's argument ultimately rests on its claim that, if Comsat is the sole U.S. entity authorized to participate *in the ownership and operation of INTELSAT* -- the subject of section 735(a)(1) -- then Comsat must also be the sole entity authorized to *furnish channels of communication on INTELSAT* -- the subject of section 735(a)(2). As Comsat elsewhere concedes, however (Comsat at 19), the authority granted by Congress to Comsat in section 735(a)(3) -- to "own and operate satellite *terminal* stations" -- is *not* exclusive. Thus, Comsat itself does not and cannot interpret section 735 as establishing a list of powers that must all be either exclusive or not.³ The fact that Comsat's authority to operate earth stations is not

³ Although section 721(c)(7) makes it unmistakably clear that the Commission is authorized to license more than one entity to operate earth stations, *see* 47 U.S.C. § 721(c)(7), nothing in the

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exclusive thus confirms that section 735(a) means exactly what it says: that section merely “*authorizes*” Comsat to engage in certain activities.

The only provision of the Act that does appear to speak in terms of exclusivity is section 701(c). That section provides, *inter alia*, that “United States participation in the global system shall be in the form of a private corporation.” 47 U.S.C. 701(c). The term “participation,” however, is not defined in the Act. There are, moreover, at least two reasonable interpretations of that term.

On the one hand, the term “United States participation” may very well mean, as BT urges, merely that Comsat is the sole “participant in INTELSAT on behalf of the U.S. *government*, not on behalf of the U.S. communications industry,” BT at 15, and that the right is completely “embodied in its right to participate in Board of Governors’ meetings and to vote.” BT at 16. On this view, Comsat would be the exclusive representative of the U.S. governmental interests in the INTELSAT system, but would not have any exclusive right to ownership and operation of the system, and the Commission thus would be authorized to order Level 4 access as well as Level 3 access.

This interpretation finds a great deal of support in the statutory text. By its terms, section 735(a)(1) expressly authorizes Comsat to “own” and “operate” INTELSAT “*in conjunction with* foreign governments or business entities.” 47 U.S.C. § 735(a)(1). This necessarily means that “business entities,” as well as “foreign governments,” may also participate with Comsat in

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language of section 735(a)(3) states that Comsat was granted the exclusive right to operate earth stations.

“owning” and “operating” the system.⁴ In short, section 735(a) can easily be read to authorize the Commission to allow private U.S. business entities to share in the ownership of INTELSAT.⁵

The Commission, however, need not resolve this issue now because, at the end of the day, which of these two interpretations of the word “participation” is correct is irrelevant to the principal question before the Commission in this proceeding. Whether or not the term “participation” encompasses ownership and operation of INTELSAT, the Commission has the undoubted authority to order Level 3 access to INTELSAT. Even if Comsat were the sole U.S. entity authorized to “participate” in INTELSAT within the meaning of section 735(a)(1), that would not mean that Comsat is the sole U.S. entity that can be authorized to purchase “channels of communication” from INTELSAT within the meaning of section 735(a)(3). In short, nothing in the language of the statute provides any basis for Comsat’s remarkable claim that Congress gave it the exclusive right to obtain services from INTELSAT.⁶

⁴ Had Congress intended to authorize Comsat to operate only in conjunction with *foreign* business entities, it presumably would have drafted the section to read “in conjunction with foreign governments and foreign business entities.” Moreover, if the term “business entities” were limited to “foreign business entities” Comsat would lack the authority to enter into even voluntary arrangements with U.S. entities to help in the planning, construction or operation of the system.

⁵ On the other hand, it may be reasonable for the Commission to conclude that Congress’ designation of Comsat as the vehicle for U.S. “participation” in INTELSAT makes Comsat the only U.S. entity authorized by law to share in the ownership and operation of the INTELSAT system. NPRM ¶ 23 (suggesting that the powers granted Comsat by section 735(a)(1) are exclusive). On this view, the Commission would be prohibited from ordering Level 4 access to INTELSAT.

⁶ Finally, Comsat alleges that had Congress intended that common carriers might in the future be authorized to obtain direct access to INTELSAT, it would have made no sense for Congress to restrict common carrier ownership of Comsat. Comsat at 21-22. That claim is nonsense. Congress restricted common carrier ownership of Comsat so as to prevent one or more entities from using Comsat’s ownership of INTELSAT to discriminate among users of the INTELSAT

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B. The Act's Legislative History Does Not Support Comsat's Contrary Interpretation.

The "legislative history" relied on by Comsat also does not support its claim that the Commission lacks statutory authority to grant direct access to carriers other than Comsat. As an initial matter, despite the fact that "Committee Reports represent the most persuasive indicia of congressional intent in enacting a statute," 2A Norman J. Singer, *Sutherland Statutory Construction* § 48.06, at 332 (5th ed. 1992); *see also Mills v. United States*, 713 F.2d 1249, 1252 (7th Cir. 1983), references to committee reports are conspicuously absent from Comsat's comments. The dearth of citations to these authorities is not surprising because, as the Commission has recognized, "the legislative reports accompanying the Satellite Act [do] not reveal a Congressional requirement that Comsat maintain its own space segment within the satellite system . . . [nor do they] require the global satellite system to be structured in such a way that its investors are the sole distributors of services from the system." NPRM ¶ 25.

Instead, the vast majority of Comsat's "legislative history" is comprised of statements made by non-legislators during committee hearings.⁷ As the courts have long recognized,

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system. Far from being inconsistent with direct access, these ownership restrictions would merely complement and facilitate the nondiscriminatory access to INTELSAT's facilities that Level 3 direct access is designed to create.

⁷ *See, e.g.*, Comsat at 6 n.11 (quoting Nicholas Katzenbach, Deputy Attorney General); *id.* at 25 n.72 (same); *id.* at 6 n.13 (quoting Leland Johnson, Chief Economist, the Rand Corporation); *id.* at 26 n.73 (quoting Bernard Strassburg, Assistant Chief, Common Carrier Bureau); *id.* at 9 n.21 (quoting Newton Minow, Chairman, FCC); *id.* at 24 n.67 (same); *id.* at 25 & n.70 (same); *id.* at 26 n.73 (same); *id.* at 28 n.77 (same); *id.* at 9 n.20 (quoting Lockheed Aircraft Corp.); *id.* at 26 n.73 (same); *id.* at 24 n.68 (quoting Theodore Brophy, Vice President and General Counsel, GTE); *id.* at 11 n.27 (quoting AT&T Corp.); *id.* at 26 n.73 (same); *id.* at 25 n.70 (quoting Robert S. McNamara, Secretary of Defense).

“statements made by [non-legislators] at the committee hearings concerning the nature and effect of a bill *are not accorded any weight*” in statutory construction. 2A Norman J. Singer, *Sutherland Statutory Construction* § 48.10, at 343 (5th ed. 1992) (emphasis added) (citing *Kelly v. Robinson*, 479 U.S. 36, 50-51 & n.13 (1986); *McCaughn v. Hershey Chocolate Co.*, 283 U.S. 488, 493 (1931)). Such statements are not statements of legislators, and thus cannot be indicative of the legislature’s intent.

But even if these statements were entitled to any weight at all, they do not support Comsat’s arguments. For example, Comsat asserts that the witnesses’ occasional references to “monopoly” show that Congress intended to give Comsat an “exclusive franchise over access to the new satellite system.” Comsat at 25-26. In fact, however, these statements principally refer to the monopoly that INTELSAT would have over the satellite *system*, not to a monopoly that Comsat allegedly would have over access. *See, e.g.*, Communications Satellite Act of 1962: Hearing on H.R. 11040 Before the Senate Committee on Foreign Relations, 87th Cong., 2d Sess. 32 (1962) (Nicholas Katzenbach stating that “[i]t is true that, at least for a number of years, only one commercial communications satellite *system* will probably be feasible. Therefore, under any system of organization, including Government ownership, there will be only a single *system* for some time, and in that sense a monopoly”)(emphasis added) (quoted by Comsat at 25 n.72). Similarly, Comsat asserts that the witnesses’ references to a “carriers’ carrier” show that Congress intended to give Comsat an exclusive franchise over access to the system. Comsat at 26-27. These references, however, are not “expressed in terms of exclusivity.” *See* NPRM ¶ 24. Indeed, these references have nothing to do with exclusivity because, as the Commission has recognized, Comsat will continue to serve as a “carriers’ carrier,” and to make profits in that capacity, even after the Commission grants direct access to other carriers. *See id.* ¶ 41.

In addition, contrary to the impression that Comsat tries to create, many of the hearing statements support the statutory construction advanced by the Commission. For example, even the witnesses quoted by Comsat repeatedly state that all carriers should be given equitable and nondiscriminatory access to the *system*, not to Comsat. *See, e.g.*, Communications Satellite Act of 1962: Hearing on H.R. 11040 Before the Senate Committee on Foreign Relations, 87th Cong., 2d Sess. 27 (1962) (Letter from Newton Minow to Sen. Mike Mansfield) (“All communication carriers will be entitled to equitable access and nondiscriminatory use of the satellite *system*”) (emphasis added); *see also* NPRM ¶ 25 (“[T]he Satellite Act does not specify, as Comsat argues, that customer access to the INTELSAT satellite system must be through [the] Comsat space segment. The Act states that customers are to have ‘nondiscriminatory’ and ‘equitable access to’ the ‘*communications satellite system*.’”) (emphasis added) (footnote omitted). Furthermore, Lee Lovinger, the head of the Justice Department’s Antitrust Division, in a statement quoted at length by Comsat, stated that “[a]ll communications common carriers should have equitable and nondiscriminatory access to the *system* Unless all communication common carriers are permitted nondiscriminatory use of the system *whether or not they participate in ownership*, those excluded will be at a competitive disadvantage with companies having full use of the system.” *See* Communications Satellites -- Hearings Before the House Committee on Interstate and Foreign Commerce, 87th Cong., 1st Sess. 135-36 (1961) (emphasis added) (quoted by Comsat at App. 1, p. 24). On its face, this statement draws the same distinction between ownership and access that the Commission drew in the NPRM.

In short, Comsat has found no support for its position in authoritative legislative history, and has instead concocted its own “legislative history” by selectively quoting -- and misquoting -- a hodgepodge of nonauthoritative witness statements, offered during committee hearings, that

neither support Comsat's position nor accurately represent the record. Accordingly, Comsat's arguments should not deter the Commission from implementing its clear statutory authority to grant Level 3 access to U.S. carriers other than Comsat.

II. COMSAT'S TAKINGS CLAIMS ARE MERITLESS.

The comments also amply support the Commission's rejection of Comsat's takings arguments. As the Commission correctly recognized in the NPRM (¶¶ 32-36), Comsat's claim that Level 3 access would breach the "regulatory contract" between Comsat and the United States (Comsat at 35) is entirely dependent on Comsat's claim that the Satellite Act grants it an exclusive franchise over access from the U.S. to the INTELSAT satellite system. *See NPRM* ¶ 35 ("It is this alleged exclusivity upon which Comsat appears to rely for its assertion of the existence of a regulatory contract.") Because Comsat's exclusivity claims are demonstrably false (as shown above and in the NPRM), it has no contractual right to exclusive access, and its breach of contract claim therefore must necessarily fail. *See id.* ¶¶ 33-35. Virtually all of the comments addressing this issue reach the same conclusion.⁸

The comments likewise support the Commission's rejection of Comsat's "regulatory taking" argument.⁹ As the Supreme Court has noted, the mere "fact that the value [of a regulated entity's property] is reduced does not mean that the regulation is invalid." *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 601 (1944). Rather, the only "end result," *id.* at 603, that is of constitutional significance is deep financial hardship of the type that threatens the continued operation or existence of the regulated entity. There can be no constitutional claim unless the

⁸ *See, e.g.*, ITE at 4; Cable & Wireless at 9; Networks at 15-18; MCI WorldCom at 7-9.

⁹ *See, e.g.*, ITE at 4; Cable & Wireless at 9; Networks at 15-18; MCI WorldCom at 7-9.

agency's regulations "jeopardize the financial integrity of the [regulated] companies, either by leaving them insufficient operating capital or by impeding their ability to raise future capital." *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 312 (1989); *see also FPC v. Texaco, Inc.*, 417 U.S. 380, 391-92 (1974) ("All that is protected against, in a constitutional sense, is that the [regulation not be] confiscatory"); *Covington & Lexington Turnpike Road Co. v. Sandford*, 164 U.S. 578, 597 (1896) (a regulation is constitutionally "unjust" only if it acts to "destroy the value of [the] property for *all* the purposes for which it was acquired") (emphasis added); *Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1181 n.3 (D.C. Cir. 1987) ("absent the sort of deep financial hardship described in *Hope*, there is no taking").

The comments confirm that, even if the Commission permitted Level 3 (and/or Level 4) access, the "deep financial hardship described in *Hope*" would not exist.¹⁰ As the Commission has recognized, "Comsat and its shareholders will continue to have a reasonable opportunity to earn a fair return from INTELSAT in connection with the traffic attributable to INTELSAT's U.S. customers with Level 3 direct access contractual arrangements." NPRM ¶ 41. Indeed, under the INTELSAT agreement, "[a] Signatory permitting Level 3 direct access will earn a return on its investment [of] up to 21 percent," *id.* ¶ 9, and will "be free to price and package its services in response to competitive market conditions to counter any adverse economic effect from new competition," *id.* ¶ 41. In short, the Commission's proposals in the NPRM "would not have a significant economic impact on Comsat," *id.*, and there would thus be no taking.¹¹

¹⁰ *See, e.g., Cable & Wireless* at 9; *Networks* at 17; *MCI WorldCom* at 8-9.

¹¹ Comsat's taking argument concerning a "permanent physical occupation" is frivolous. *See Comsat* at 40-42. INTELSAT's voluntary decision to allow direct access customers to use its

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III. THE RECORD AMPLY SUPPORTS THE COMMISSION'S CONCLUSION THAT LEVEL 3 DIRECT ACCESS WOULD FURTHER THE PUBLIC INTEREST.

As AT&T explained in its comments, granting direct access to the INTELSAT system also will tangibly and materially advance the public interest. Indeed, no one disputes AT&T's demonstration that, by accessing INTELSAT directly, carriers will reduce their costs by avoiding the mark-up costs associated with Comsat charges, and will obtain faster and more flexible provisioning. AT&T at 11-12. Comsat nevertheless persists in claiming that U.S. consumers would actually be better off under a system of monopoly provision of satellite communication channels than in a competitive environment. Comsat's unsupported and self-serving claims that monopoly is better than competition not only fly in the face of INTELSAT's own assessment of direct access, NPRM ¶ 44, but are belied by the empirical evidence in the record.

In particular, actual experience in the U.K. under a system of direct access demonstrates that such access yields numerous and substantial consumer public interest benefits. As BT reports, numerous entities within the U.K. -- including, ironically, one of Comsat's own subsidiaries -- have taken advantage of direct access to avoid the monopoly markup that a sole gateway entity would extract. BT at 6-8. Accordingly, "Comsat's position that direct access would not result in significant cost savings has not been borne out by the U.K. experience." BT at 6.

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space segment capacity in no way constitutes a permanent physical occupation of Comsat's property by the U.S. government. *See* NPRM ¶ 38.

BT's own perceptions of the effect of direct access on consumers is mirrored by the views of one of the most important consumer segments that utilizes INTELSAT transmission: the television networks. "The Networks have found the availability of direct access abroad to offer benefits of the type that would be expected" -- *i.e.*, avoiding a substantial "add-on fee," and facilitating "the operational arrangements for through circuits." Networks at 8-9. That both suppliers and consumers of space segment transmission in the U.K. have found direct access to be substantially better for consumers than the prior regime of exclusivity provides a strong empirical basis for the Commission to conclude that ordering direct access in the U.S. would further the public interest.¹²

IV. THE RECORD CONFIRMS THAT COMSAT HAS NO BASIS FOR CLAIMING A "SURCHARGE" FOR DIRECT ACCESS.

Finally, the comments overwhelmingly confirm that Comsat is not entitled to a "surcharge" over and above the IUCs for the costs it allegedly will incur in carrying out its Signatory functions under a direct access regime.¹³ Indeed, in the NPRM, the Commission directed Comsat to provide detailed cost information to justify its claim. NPRM ¶ 47. Tellingly, Comsat "has *not* attempted to replicate the complicated analysis that would be legally required in order to ensure that a direct access surcharge regime was fully compensatory," Comsat at 83, and thus has left its claim without evidentiary basis in the record.

¹² Contrary to Comsat's claim, Comsat at 69-70, mandating Level 3 direct access would in no way be inconsistent with, nor should it delay, broader efforts to privatize INTELSAT. Canada, for example, recently implemented direct access, but that has done nothing to alter Canada's advocacy for privatization of the INTELSAT system.

¹³ See, *e.g.*, Cable & Wireless at 4-6; BT at 5-6; GE Americom at 10-12; Networks at 10-11; MCI WorldCom at 12-13.

Comsat's failure to conduct the necessary cost analysis is not surprising, because any such analysis likely would show that Comsat's alleged costs are *de minimis*. As BT explains, it does not incur *any* marketing, sales, operational, or transactional costs in relation to the operations of direct access in the U.K., nor does it incur what Comsat has described as the costs of satellite launch and insurance. BT at 5.¹⁴ Furthermore, BT does not include any mark-up over the IUC to recover costs associated with its Signatory and carrier functions because such costs, even if they could be identified, are "inconsequential." *Id.* at 5-6. Indeed, BT's experience is that the administrative costs associated with calculating Signatory costs are greater than the Signatory costs themselves. *Id.* at 5. Accordingly, under the U.K. direct access system carriers "obtain INTELSAT space segment at the same tariff as BT, by paying the IUC directly to INTELSAT." *Id.* Comsat has utterly failed to explain why a different result is warranted in the United States.

¹⁴ At most, Comsat is entitled to recover costs directly attributable to its role as Signatory in the direct access system. In no event would it be entitled to recover other costs, such as costs associated with "marketing" its services to its own customers, that are incurred in the ordinary course of its business.

CONCLUSION

For these reasons, and those stated in AT&T's Comments, the Commission should adopt the Level 3 direct access proposals contained in the NPRM.

Respectfully submitted,



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January 29, 1999

CERTIFICATE OF SERVICE

I, Margaret Brue, do hereby certify that on this 29th day of January, 1999,
a copy of the foregoing "Reply Comments of AT&T Corp." was served by U.S. first class
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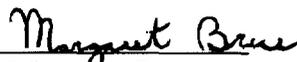
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