

Wiley, Rein & Fielding

ORIGINAL

1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Lawrence W. Secret III
(202) 719-7074
lsecret@wrf.com

Fax: (202) 719-7049
www.wrf.com

June 2, 1999

Christopher J. Wright
General Counsel
Federal Communications Commission
445 12th Street, S.W. - The Portals
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: COMSAT Corporation
Ex Parte Presentation
IB Docket No. 98-192, FCC File No. 60-SAT-ISP-97

Dear Chris:

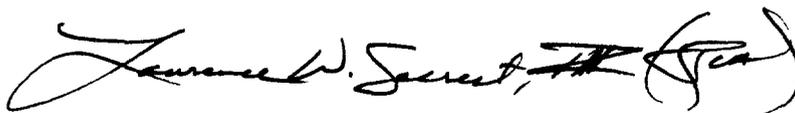
Thanks again for taking the time on May 11, 1999, to listen to COMSAT's presentation of legal arguments concerning the pending Direct Access proceeding. In keeping with the comments expressed at that meeting, COMSAT is submitting the following summary of those arguments concerning the statutory basis of the corporation's exclusive franchise over the provision of INTELSAT-based satellite services in the United States.

In accordance with Section 1.1206(a)(1) of the Commission's rules, two complete copies of this notification are being submitted to the Secretary for filing in the docket. Additional copies also are being furnished under separate cover to Susan Steiman, Daniel Harrold, and Marilyn Sonn of your office, as well as to the parties of record in the proceeding.

Thanks again for the time and attention you have devoted to considering our position.

Best personal regards.

Sincerely,



Lawrence W. Secret, III

Enclosure

No. of Copies rec'd 042
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cc:

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Marilyn Sonn
Mark W. Johnson
Sam Antar
Leon Kestenbaum
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Paul Misener, Esq.
Christopher Wright
Antoinette Cook Bush



**THE COMMUNICATIONS SATELLITE ACT OF 1962
PREVENTS THE FCC FROM MANDATING LEVEL 3
DIRECT ACCESS TO THE INTELSAT SYSTEM**

**Warren Y. Zeger
Howard D. Polsky
Keith H. Fagan**

COMSAT Corporation

**Richard E. Wiley
Lawrence W. Secrest, III
Rosemary C. Harold**

Wiley, Rein & Fielding

June 2, 1999

**THE COMMUNICATIONS SATELLITE ACT OF 1962
PREVENTS THE FCC FROM MANDATING LEVEL 3
DIRECT ACCESS TO THE INTELSAT SYSTEM**

The Communications Satellite Act of 1962 admits of only one reasonable interpretation: Congress vested COMSAT with the exclusive U.S. franchise on access to the global communications satellite system that became INTELSAT. Lawmakers made COMSAT the sole U.S. participant in the global satellite venture, giving the new corporation – alone among U.S. entities – the authority not only to “construct,” “own” and “operate” the satellite system but also to “furnish, for hire, channels of communication” to users of that system. Indeed, COMSAT’s exclusive service franchise was a necessary counterpart of its obligation to finance the construction and operation of the system.

Both the plain meaning of the Satellite Act and the Act’s legislative history unambiguously support this conclusion. Not a single participant in the two-year debate over the Act ever disputed that COMSAT was being granted exclusive access to the envisioned global system – and that understanding was repeatedly confirmed for almost 40 years, in an unbroken string of Commission and court decisions. To support its “Level 3” direct access proposal, the FCC’s NPRM¹ basically ignores these authorities, or brushes them aside as “dicta.” Instead, the NPRM advances the novel theory that COMSAT’s statutory authority to own and govern the U.S. portion of the

¹ *Direct Access to the Intelsat System*, IB Docket No. 98-192 (1998) (“NPRM”).

satellite system – which the FCC concedes is an exclusive right – can be distinguished from COMSAT’s authority to operate as the sole U.S. provider of INTELSAT-based services – which the FCC contends is not exclusive. As set forth below (and as shown in more detail in COMSAT’s Comments and Reply Comments in this proceeding), there is not a shred of support for such a proposition.

I. The Satellite Act Grants Only COMSAT the Right to Furnish, for Hire, Channels of Communication to Users of the Global Satellite System.

In the NPRM, the Commission argues that its Level 3 direct access proposal is legally supportable because the provision of the Satellite Act authorizing COMSAT to “furnish, for hire, channels of communication” is not expressed in terms of exclusivity. In fact, concepts of exclusivity permeate not only this provision, but the entire statute and its enactment.

“Statutory construction . . . is a holistic endeavor.”² Meaning is not determined by ripping a clause or phrase out of context or by imposing upon it an artificial or crabbed reading that undermines the coherence and effectiveness of the entire statutory scheme. Rather, as the Supreme Court emphasized just last year, “context counts, and [we] stress in this regard what the Court has said over and over: In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.”³

² *United Savings Ass’n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1978) (Attachment 1).

³ *Regions Hosp. v. Shalala*, 118 S. Ct. 909, 917 n.5 (1998) (Attachment 2) (quoting *United States Nat’l Bank v. Independent Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993)) (internal punctuation marks omitted).

The “whole act” rule of statutory construction has been lauded by a leading authority as “the most realistic [canon of construction] in view of the fact that a legislature passes judgment upon the act as an entity, not giving one portion of the act any greater authority than another.”⁴ The Commission also has expressly recognized that it is bound “by the rules of statutory construction that require [the Commission] to examine the whole statute when interpreting a part.”⁵ In applying this “whole act” rule, the Commission has emphasized that, even if an interpretation of a statutory provision is a “plausible reading taken in isolation,” such an interpretation must be *rejected* if is not the “most harmonious with the policies and the other provisions of the Act.”⁶

Assuming *arguendo* that the NPRM's reading of the “furnish for hire” provision is even “plausible,” it is certainly not the “most harmonious” with the whole Act – on the contrary, it is utterly cacophonous. Indeed, the provision interpreted in the NPRM –

⁴ 2A Norman J. Singer, *Sutherland on Statutes and Statutory Construction* § 47.02, at 139 (5th ed. 1992) (Attachment 3).

⁵ *Development of Competition & Diversity in Video Programming Distribution and Carriage*, 10 FCC Rcd 3105, 3125 (1994) (Mem. Op. & Order on Recon.) (“*Video Programming Order*”) (Attachment 4) (citing 2A *Sutherland Stat. Const.* §§ 46.05, 47.02 at 103, 139 and Supreme Court cases). See also *Kokoszka v. Bedford*, 417 U.S. 642, 650 (1974) (Attachment 5) (“When interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such construction as will carry into execution the will of the Legislature.”) (quoting *Brown v. Duchesne*, 60 U.S. (19 How.) 183, 194 (1857)).

⁶ *Video Programming Order*, 10 FCC Rcd at 3125 (citing 2A *Sutherland Stat. Const.* § 46.05, at 103); see also *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, 12 FCC Rcd 8653, 8675 (1997) (Second Order on Recon.) (Attachment 6) (interpreting subsection 272(e)(4) of the Communications Act so as to render it “consistent with the overriding focus of section 272 generally”), *aff’d sub nom.*, *Bell Atlantic Tel. Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997) (Attachment 7). Indeed, even if a statutory provision is ambiguous (which this provision is not), an agency must interpret it “consistently with the statutory purpose and legislative history.” *Bell Atlantic Tel. Cos.*, 131 F.3d at 1049 (citing *Troy Corp. v. Browner*, 120 F.3d 277, 285 (D.C. Cir. 1997)).

Subsection 305(a)(2) – does not even harmonize with the other provisions *in the same section*, which sets forth all of the “authorized powers” of COMSAT.

Specifically, Section 305(a) states that:

In order to achieve the objectives and carry out the purposes of this Act, 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 201(c)(7).⁷

The three paragraphs in this subsection comprehensively define the relationship of COMSAT with the new satellite system, with foreign governments and business entities, and with U.S. communications common carriers and other authorized foreign and domestic customers of the system. Significantly, the first and third paragraphs expressly state that particular entities may be involved with COMSAT in various INTELSAT-related activities. Section 305(a)(1) authorizes *foreign* business entities and governments to participate in the construction, ownership and operation of the global satellite system, and Section 305(a)(3) refers to authorization elsewhere in the Act for other U.S. carriers (alone, jointly, or with COMSAT) to own satellite terminal stations.

In contrast, Section 305(a)(2) mentions no other entities, except as recipients of COMSAT services. The paragraph states that COMSAT shall furnish channels of

⁷ Communications Satellite Act of 1962 § 305(a), Pub L. No. 87-624 § 305, 76 Stat. 425 (1962), codified at 47 U.S.C. § 735(a).

communication to U.S. carriers and other authorized entities. There is no indication, either in this paragraph or anywhere else in this extremely detailed statute, that any other entity may be authorized to furnish such channels, or that other entities may obtain these channels in any manner other than from COMSAT. Clearly, the “most harmonious” interpretation of Section 305(a)(2) is that such channels may be obtained only through COMSAT.

This interpretation is further confirmed by comparison to other sections of the Act. For example, Section 102(c) decrees that “United States participation in the global system shall be in the form of a private corporation.”⁸ Lawmakers could have allowed participation through multiple private corporations, but they rejected that option. Similarly, Section 305(b)(4) authorizes COMSAT – and no one else – to “contract with authorized users . . . for the services of the communications satellite system.”⁹

Elsewhere, however, the Satellite Act is at pains to specify the precise role of entities other than COMSAT – particularly common carriers. For example, Section 201(c)(7) allows carriers to own and operate satellite terminal stations,¹⁰ and Section 304(b) allows “authorized carriers” to own stock in COMSAT.¹¹ In sum, when Congress wanted to assign roles to the carriers, it knew how to do so. The Commission may not give the carriers an additional role which Congress has intentionally withheld.

⁸ 47 U.S.C. § 701(c) (emphasis added).

⁹ 47 U.S.C. § 735(b)(4).

¹⁰ 47 U.S.C. § 721(c)(7).

¹¹ 47 U.S.C. § 734(b).

The NPRM admits that Section 305(a)(1) makes COMSAT the “sole U.S. entity in INTELSAT activities” that may “plan, initiate, construct, own, manage, and operate” the satellite system.¹² What the NPRM fails to recognize, however, is that when Congress in like terms *in the same subsection* authorized COMSAT (and no one else) to “furnish for hire, channels of communication,” it had no more need to specify there that COMSAT *exclusively* could provide those communication channels than it did with respect to COMSAT's sole ownership and operational power. The entire subsection – indeed, the entire statute – is constructed around the concept of U.S. participation in the satellite system through a single corporation and the regulation of that corporation by the Commission.¹³ In short, it would be arbitrary and capricious to read the “ownership and operation” provision as exclusive, and then construe the next section as non-exclusive when there is nothing in the language or structure of the Act to warrant the distinction.

The legislative history of the Act also compels the conclusion that only COMSAT has the authority to provide INTELSAT-based channels of communication to U.S.

¹² See NPRM ¶ 23 (quoting 47 U.S.C. § 735(a)(1)); see also NPRM ¶ 15 (“we do not believe that the Commission currently has authority to implement Level 4 ‘investment’ direct access under the [Satellite Act]”).

¹³ COMSAT's initial Comments in this proceeding discuss the overall scheme of the Satellite Act in great detail and demonstrate that the entire statute makes sense *only* if it grants COMSAT the exclusive service franchise. See Comments of COMSAT Corporation in re *Direct Access to the INTELSAT System*, IB Docket No. 98-192, File No. 60-SAT-ISP-97, at 4-10, 14-27 (filed Dec. 22, 1998) (“Comments”), and Appendix 1, “The FCC Lacks Statutory Authority to Permit Level 3 Direct Access to the INTELSAT System.” We will not repeat that discussion here, except to emphasize that enacting a statute permitting direct access would have undermined the central purpose of the legislation. Congress did not intend for the Satellite Act to fail. Permitting direct access, however, would have thwarted lawmakers' reason for creating COMSAT in the first place – the hope of obtaining private investment to fund the venture. Few if any potential shareholders would have acquired COMSAT stock if they had thought that the new company could be bypassed for service on the very system it was to construct.

users. Perhaps most tellingly, the Senate Report issued contemporaneously with the Act states that under Section 305(a)(2), “[i]t will be the purpose of the corporation . . . to furnish for hire channels of communication to United States communication common carriers who, *in turn*, will use such channels in furnishing their common carrier communications services to the public.”¹⁴ These words, like the words of the statute itself, simply leave no room for the notion that carriers can obtain INTELSAT capacity directly. The NPRM, however, ignores this dispositive language.

The NPRM also ignores the fact that, without exception, all participants in the deliberations over the Satellite Act recognized that Congress was granting COMSAT an exclusive franchise over access to the new satellite system.

- The Administration recognized it – the Deputy Attorney General testified that the legislation called for “one corporation engaged in the transmission of messages by satellite, perform[ing] services for all authorized communications carriers in this country. . . .”¹⁵
- Congress recognized it – the Senate floor manager of the legislation explained to his colleagues that the existing U.S. carriers would “be the principal customers” of COMSAT for the space segment services of the global system,¹⁶ and the Chairman of the House Science and Astronautics Committee observed that, while foreign participants would control usage of the system in their own countries, the U.S. participant (COMSAT) would have exclusive U.S. access.¹⁷

¹⁴ S. Rep. No. 1584, 87th Cong., 2d Sess. 10-11 (1962) (Attachment 8), *reprinted in* 1962 U.S.C.C.A.N. 2269, 2272 (emphasis added).

¹⁵ *Communications Satellite Legislation: Hearings on S. 2650 and S. 2814 Before the Senate Comm. on Aeronautical and Space Sciences*, 87th Cong., 2d Sess. 388 (1962) (testimony of Dep. Att’y Gen. Nicholas deB. Katzenbach) (Attachment 9).

¹⁶ 108 Cong. Rec. 16,873 (1962) (statement of Sen. John Pastore) (Attachment 10).

¹⁷ *Communications Satellites: Hearings Before the House Comm. on Science and Astronautics*, 87th Cong., 1st Sess., pt. 2, at 721 (1961) (statement of Chairman Joseph E. Karth, House Science and Astronautics Committee) (Attachment 11) (“Even though we might have a domestic monopoly, [we] are not going to have a worldwide monopoly under any circumstances....”).

- The Commission recognized it – FCC Chairman Newton Minow testified (approximately one week before the Act was passed) that “capacity must be obtained, of course, from the satellite corporation,” and that the corporation would be a “common carrier’s common carrier.”¹⁸
- Other witnesses recognized it – for example, an analyst from a prominent think tank testified that the owner/operator of the first satellite system “would have a monopoly in the sense that he will be the *sole seller* of satellite communication services.”¹⁹
- And even the other common carriers recognized it – GTE’s general counsel testified that the carriers understood that COMSAT “would serve as a common link for communications common carriers which would be its customers,”²⁰ and AT&T opposed the legislation *precisely because* it would create COMSAT as “an intermediate ‘carriers’ carrier’ entity.”²¹

In contrast, the legislative history of the earth station provisions of the Act shows that, when Congress intended for the carriers to have a role comparable to that of

¹⁸ *Communications Satellite Act of 1962: Hearings on H.R. 11040 Before the Senate Comm. on Foreign Relations, 87th Cong., 2nd Sess. 20 (1962) (“1962 Senate Foreign Relations Hearings”)* (statement of FCC Chairman Newton Minow) (Attachment 12); *see also Communications Satellite Legislation: Hearings on S. 2814 (as amended by Space Committee) and S. 2814, Amendment, Before the Senate Commerce Comm., 87th Cong., 2d Sess. 106 (1962)* (statement of FCC Commissioner Rosel H. Hyde) (Attachment 13) (legislation proposes “one single, you might call it, a wholesaler of communications services to carriers....”).

¹⁹ *Space Satellite Communications: Hearings Before the Subcomm. on Monopoly of the Senate Select Comm. on Small Business, 87th Cong., 1st Sess., pt. 1, at 89 (1961)* (testimony of Leland Johnson, Chief Economist, Rand Corporation) (Attachment 14) (emphasis added). The legislative history is replete with references to the fact that the U.S. participant in the new satellite system would have a monopoly, at least until other satellite systems were constructed. But such references – as well as the consistent references to COMSAT as a “carrier’s carrier” – would have been meaningless if the carriers could have bypassed COMSAT to connect directly with the new satellites.

²⁰ *Communications Satellites: Hearings Before the House Comm. on Science and Astronautics, 87 Cong., 1st Sess., pt. 1, at 75-76 (1961) (“1961 House Science Hearings—Part I”)* (statement of Theodore F. Brophy, Vice President and General Counsel, GTE) (Attachment 15).

²¹ Reply of American Telephone & Telegraph Co. in *An Inquiry Into the Administrative and Regulatory Problems Relating to the Authorization of Commercially Operable Space Communications Systems*, FCC Docket No. 14024, at 5 (filed May 15, 1961), *reprinted in 1961 House Science Hearings—Part I* at 381 (appended to testimony of AT&T Vice President James E. Dingman) (Attachment 15).

COMSAT, lawmakers expressly provided for it. Hence, the absence of “terms of exclusivity” in Section 305(a)(2) is not probative, as the NPRM asserts; what *is* probative is the absence of any language giving anyone other than COMSAT the right to furnish the channels of communication. As noted in a key Senate report:

The [Kennedy] administration bill originally provided for “satellite terminal stations” – i.e., ground stations – to be owned and operated by the corporation [i.e., COMSAT]. There was *no mention of the additional possibility* of joint or separate ownership of such stations by the corporation and authorized communication carriers. Amendments made by the committee in following portions of the bill would authorize such joint or separate ownership of these stations, and amendments in the definitions were made *to conform to this change of policy*. The committee also made other changes in the interests of clarity and conciseness.²²

Clearly, if Congress had also intended to allow for the “additional possibility” that users could obtain channels of communication other than through COMSAT, it would have adopted similar amendments “to conform to this change in policy.” The fact that Congress did no such thing is further proof that lawmakers meant for COMSAT to be the exclusive provider of INTELSAT space segment.

In sum, even a cursory review of the voluminous history of the Satellite Act demonstrates that concern over the new entity's provision of service was the linchpin of Congress' two-year debate.²³ The proposal to permit Level 3 direct access simply ignores the overwhelming legislative record.

²² S. Rep. No. 1319, 87th Cong., 2d Sess. 3 (1962) (Attachment 16) (emphasis added).

²³ For additional legislative history quotations in the same vein, see COMSAT's Comments at 4-10, 22-27 and Appendix 1 at 2-5, 13-65.

II. The Passage of the 1978 Inmarsat Act Does Not Undermine the Validity of Congress' Decision in the 1962 Satellite Act to Grant COMSAT an Exclusive Franchise.

The NPRM suggests that support for Level 3 direct access can also be found in the text of the 1978 Inmarsat Act – which, the agency concedes, does grant COMSAT an exclusive franchise with respect to the first satellite system designed for mobile communications. Specifically, the NPRM asserts that, while the 1978 Act designates COMSAT as “the sole operating entity for the United States for participation in Inmarsat, for the purpose of providing international maritime satellite telecommunications services,”²⁴ there is no comparable provision in the 1962 Act.

This reasoning cannot be sustained. Even in the same statute, Congress may express the same idea using different verbal formulations.²⁵ *A fortiori*, it is of no consequence that two different Congresses, separated by 16 years and operating in different settings, may have used slightly different words to express the same concept.

Moreover, the circumstances confronting the 95th Congress in 1978 differed markedly from those facing the 87th Congress in 1962. The most fundamental distinction is that *neither COMSAT nor INTELSAT was in existence in 1962*. Nor was it clear whether COMSAT would establish the envisioned global system on its own or as part of an international consortium. Thus, it would have been impossible for lawmakers

²⁴ 47 U.S.C. § 752(a)(1).

²⁵ It is beyond dispute that “Congress, in its wisdom, may choose to express the same idea in many different ways.” *Stowell v. Secretary of Health and Human Servs.*, 3 F.3d 539, 542 (1st Cir. 1993) (Attachment 17). Thus, even within the same statute, Congress may vary the terms that it uses without conferring separate meanings on the alternative terms. See, e.g., *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 480 (1992) (Attachment 18) (construing the statutory term “employee” to bear precisely the same meaning as the term “person entitled to compensation,” because, in context, “[t]he plain meaning of [“employee”] cannot be altered by the use of a somewhat different term in another part of the statute”).

to draft the 1962 Act exactly as they would the 1978 Act, when Congress was dealing with known entities and known relationships.

Even so, the parallels between the Satellite Act and the Inmarsat Act are striking. Minor differences in language may be explained by the simple and obvious fact that the drafters of the Inmarsat Act benefited from the experience gained, and the satellite “terms of art” developed, through implementation of the Satellite Act and the creation, deployment, and operation of the INTELSAT system. Thus:

- While the Inmarsat Act designates COMSAT as the “sole operating entity of the United States for participation in Inmarsat,” the Satellite Act provides that “United States participation in the global system shall be in the form of a private corporation.”²⁶ Both statutes refer to participation by a single entity: COMSAT. It is hard to see how one more readily establishes an exclusive franchise than the other.
- While the Inmarsat Act authorizes COMSAT to own and operate the United States share of Inmarsat “space segment,” the Satellite Act grants authority to “furnish, for hire, channels of communication.”²⁷ The term “space segment” may not have existed in 1962, but the concept is just as clearly expressed in the Satellite Act as it is in the Inmarsat Act. Indeed, the Commission still uses the term “channels of communication” to refer to INTELSAT space segment.

The NPRM appears to take the position that the 1978 Act can be invoked as evidence of Congress’ intent in enacting the 1962 Act. In fact, it is well settled that language in a subsequent statute or legislative history cannot shed light on lawmakers’ intent in enacting an earlier statute.²⁸ However, such language can shed light on

²⁶ Compare 47 U.S.C. § 752(a)(1) with *id.* § 701(c).

²⁷ Compare 47 U.S.C. § 752(c)(4) with *id.* § 735(a)(2).

²⁸ See *National Labor Relations Bd. v. Lion Oil Co.*, 352 U.S. 282, 291 (1957) (Attachment 19) (“a 1948 committee report is no part of the legislative history of a statute enacted in 1947”).

lawmakers' intent in enacting the *subsequent* statute. A review of the 1978 debate over the Inmarsat Act shows that all parties believed that Congress was replicating the 1962 Act, and that the older law granted COMSAT an exclusive franchise over access to INTELSAT.

The opponents of the Inmarsat Act made exactly this point in trying to defeat the legislation. For example, NTIA argued that granting COMSAT this second exclusive franchise would "extend[] COMSAT[']s *existing statutory monopoly* into a new field."²⁹ And one of the carrier witnesses complained that the Act would give COMSAT "a stranglehold over satellite communications."³⁰ These concerns, of course, would have made no sense if the 1962 Act had permitted non-exclusive access in the first place.

In contrast, no one suggested in 1978 that Congress intended to give COMSAT *greater* access rights to the Inmarsat system than the corporation already had with respect to the INTELSAT system. Surely, if lawmakers were somehow enlarging COMSAT's "monopoly" powers through the Inmarsat legislation, this issue would have received extensive attention in the congressional hearings and debates.

²⁹ *International Maritime Satellite Act: Hearing on H.R. 11209 Before the Subcomm. On Communications of the House Comm. On Interstate and Foreign Commerce, 95th Cong., 2d Sess. 69 (1978) (statement of Wladimir Naleszkiewicz, National Telecommunications and Information Administration) (Attachment 20).*

³⁰ *International Maritime Satellite Telecommunications: Hearing on S. 2211 and H.R. 11209 Before the Subcomm. On Communications of the Senate Comm. On Commerce, Science and Transportation, 95th Cong., 2d Sess. 96 (1978) ("Senate Inmarsat Hearing") (statement of E. A. Gallagher, Chairman, Western Union International, Inc.) (Attachment 21). See generally Appendix 1 to COMSAT's Comments at 78-81.*

III. For Almost 40 Years, the Commission and the Courts Have Explicitly Recognized that COMSAT Has an Exclusive Franchise over Access to the INTELSAT System.

In the years following the enactment of the Satellite Act, the FCC acknowledged repeatedly that COMSAT's franchise with respect to INTELSAT capacity is exclusive.

For example:

- In 1966, the agency noted that it "is not given authority to license any other U.S. carrier to operate the space segment. . . . Instead, such carriers must procure the space segment facilities from Comsat."³¹
- In 1970, the Commission similarly recognized that COMSAT "is the chosen instrument to provide space segment facilities to licensees of earth stations in the United States."³²
- In 1975, the agency stated that, "[a]s U.S. participant in INTELSAT, Comsat has the sole right to obtain capacity in the INTELSAT satellites in order to provide international communications satellite services to U.S. communications common carriers and other authorized users"³³ – a finding that disposes of the claim that the statutory term "participation" refers only to ownership rights and not to COMSAT's exclusive service franchise.
- In 1979, only a year after passage of the Inmarsat Act, the FCC stated that the 1962 and 1978 Acts "both place specific obligations and responsibilities on COMSAT as the chosen instrument of the United States to participate in international cooperative ventures for the

³¹ *In re Authorized Entities and Authorized Users under the Communications Satellite Act of 1962*, 4 F.C.C. 2d 421, 428 (1966) (Attachment 22), *modified in other respects, Modification of Authorized User Policy*, 90 F.C.C. 2d 1394 (1982), *vacated sub nom., ITT World Communications, Inc. v. FCC*, 725 F.2d 732 (D.C. Cir. 1984), *and reinstated on remand*, 100 F.C.C. 2d 177 (1985).

³² *Establishment of Regulatory Policies Relating to the Authorization of Satellite Facilities For the Handling of Transiting Traffic*, 23 F.C.C. 2d 9, 12 (1970) (Mem. Op. & Statement of Policy) (Attachment 23), *clarified on recon.*, 30 F.C.C. 2d 513 (1971).

³³ *COMSAT, Investigation into Charges, Practices, Classifications, Rates and Regulations*, 56 F.C.C. 2d 1101, 1116 (1975) (Decision) (emphasis added) (Attachment 24), *vacated and remanded in part in other respects, COMSAT v. FCC*, 611 F.2d 883 (D.C. Cir. 1977).

establishment of global commercial satellite systems.”³⁴ In fact, the Commission went on to state that, under the Satellite Act, COMSAT “was to be the only U.S. entity authorized to construct and operate satellite facilities for international communications. *As such*, [COMSAT] was to provide U.S. communications common carriers and other authorized users access to satellite facilities on a non-discriminatory basis.”³⁵ These statements completely undercut the NPRM’s tentative conclusion that the two Acts carved out different roles for COMSAT with respect to the provision of space segment.

- In 1980, the agency reiterated yet again that the Satellite Act “creates a single entity in the form of a private corporation to carry out its objectives and purposes. [I]t endows [COMSAT] with extraordinary powers and privileges to carry out its mission, including *monopoly status in the provision of services via the satellite system to authorized U.S. users.*”³⁶

Should the Commission decide to reverse its long-held construction of the Satellite Act, it would face considerable burdens in justifying the change. Courts have made clear that agency reversals of long-standing interpretations of statutes are “entitled to ‘considerably less deference’ than a consistently held agency view.”³⁷

Moreover, the courts themselves have also been called upon to opine on COMSAT’s unique role – and in so doing, they have repeatedly and explicitly acknowledged that the Act mandates COMSAT’s exclusive access to the INTELSAT system. These judicial statements are not merely dicta, as the NPRM would have it.

³⁴ *Implementation of Section 505 of the International Maritime Satellite Telecommunications Act*, 74 F.C.C. 2d 59, 64 (1979) (Interim Report) (Attachment 25), *finalized, COMSAT Study – Implementation of Section 505 of the International Maritime Satellite Telecommunications Act*, 77 F.C.C. 2d 564 (1980) (Final Report and Order) (“COMSAT Study”) (Attachment 26).

³⁵ *Id.*

³⁶ *COMSAT Study*, 77 F.C.C. 2d at 587 (1980) (emphasis added) (Attachment 26).

³⁷ *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 417 (1993) (Attachment 27) (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 446 n.30 (1987) (quoting *Watt v. Alaska*, 451 U.S. 259, 273 (1981))).

For example, the U.S. District Court for the Southern District of New York found, after a comprehensive analysis of the Satellite Act, that Congress “established COMSAT as a government-created monopoly”³⁸ and “intended to establish, through a global system, a single provider of international satellite services to and from the United States.”³⁹

Upholding the core of that decision on appeal, the Second Circuit noted that Congress “created COMSAT to wield monopoly power” and made COMSAT “the sole provider of access to the global Satellite System [INTELSAT] to U.S. communications carriers.”⁴⁰

Even court decisions that lack the same degree of detailed analysis acknowledge COMSAT’s obvious right of exclusive access to INTELSAT. For example, in 1984, the D.C. Circuit described COMSAT as “the U.S. representative to INTELSAT and the sole U.S. entity permitted access to the system.”⁴¹ These statements stand as judicial notice of COMSAT’s role in INTELSAT – a role that is abundantly clear on the face of the statute.

³⁸ *Alpha Lyracom Space Communications, Inc. v. Communications Satellite Corp.*, 68 Rad. Reg. 2d (P & F) 405, 409 (S.D.N.Y. 1990) (Attachment 28), *aff’d in pertinent part and rev’d in part in other respects*, 946 F.2d 168 (2d Cir. 1991) (Attachment 29), *cert. denied*, 502 U.S. 1096 (1992).

³⁹ *Id.* at 410 (citing S. Rep. No. 1584, 87th Cong., 2d Sess. 28, 30 (1962) (Attachment 8)). Of course, Congress also contemplated “the creation of additional communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest.” 47 U.S.C. § 701(d). Thus, COMSAT’s “monopoly” was only with respect to INTELSAT facilities.

⁴⁰ *Alpha Lyracom*, 946 F.2d at 174, 175 (Attachment 29).

⁴¹ *National Association of Broadcasters v. FCC*, 740 F.2d 1190, 1214 (D.C. Cir. 1984) (Attachment 30).

IV. The Commission's Obligation to Insure Equitable and Nondiscriminatory Access to the Global Satellite System Can Only Be Achieved through COMSAT.

Finally, the NPRM asserts that direct access is permitted by Section 201(c)(2) of the Satellite Act, which directs the Commission to “insure that all present and future authorized carriers shall have nondiscriminatory use of, and equitable access to, the communications satellite system. . . .”⁴² But it should be obvious from the foregoing discussion that this provision is directed at common carriers in their capacity as customers of a regulated entity – COMSAT. In any event, the rest of the Act makes clear that the provision is intended to insure that common carriers are protected, through FCC regulation, against possible favoritism by COMSAT in its role as a carrier’s carrier. Immediately following the declaration that U.S. participation in the global system “shall be in the form of a private corporation, subject to appropriate governmental regulation,” Section 102(c) declares that “all authorized users shall have nondiscriminatory access to the system”⁴³ – and the Act then goes on, in reciprocal provisions, to make the Commission the “appropriate governmental regulat[or]” and COMSAT the entity so regulated.⁴⁴

If the NPRM were correct, this entire statutory scheme would be meaningless, because INTELSAT, not COMSAT, would be providing access to the system under a Level 3 direct access regime, and INTELSAT is an intergovernmental organization not

⁴² 47 U.S.C. § 721(c)(2), *discussed in NPRM ¶ 25.*

⁴³ 47 U.S.C. § 701(c).

⁴⁴ *Id.* See also 47 U.S.C. § 721(c) (setting forth the scope of the FCC’s regulatory authority over COMSAT); 47 U.S.C. § 741 (deeming COMSAT to be a common carrier subject to FCC regulation).

subject to FCC regulation. The Commission simply cannot insure that users receive equitable and nondiscriminatory access if it cannot regulate the entity providing such access. Moreover, if the NPRM were correct, all carriers (including COMSAT) would be able to obtain INTELSAT capacity directly – but only COMSAT would be subject to the special requirements of the Satellite Act.⁴⁵ Such an strained interpretation of the Satellite Act does not withstand scrutiny.

Conclusion

The legislative history of the Satellite Act offers extensive support for the proposition that the Act itself states plainly: COMSAT's statutory role includes its right to exclusive U.S. access to the INTELSAT system. Congress reaffirmed that right in explicitly modeling the 1978 Inmarsat Act on the 1962 statute,⁴⁶ and the Commission and the courts have repeatedly recognized that right as well. There is no legal support, therefore, for an FCC decision that would reverse Congress' mandate and strip COMSAT of its exclusive franchise over the provision of INTELSAT-based services to U.S. users. The Commission is "not at liberty to release [itself] from the tie that binds it to the text Congress enacted"⁴⁷ and may not "rewrite this statutory scheme on the basis

⁴⁵ See, e.g., 47 U.S.C. § 721(c)(8) (requiring COMSAT to issue its securities and debt instruments on unique terms set forth by Congress and the FCC); 47 U.S.C. § 744(b) (requiring COMSAT to make regular reports to the President and Congress on its operations, activities and accomplishments), 47 U.S.C. § 733(a) (authorizing the President of the United States to appoint three COMSAT directors).

⁴⁶ Senate Inmarsat Hearing at 26 (letter from Patricia Wald, Assistant Attorney General of the Dep't of Justice) (explaining that Carter Administration proposal was "modeled on the 1962 Communications Act") (Attachment 21).

⁴⁷ *MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186, 1194 (D.C. Cir. 1985) (Attachment 31).

of its own conception of the equities of a particular situation."⁴⁸ In sum, if the Commission is to have authority to permit Level 3 direct access, that authorization must come from a new Act of Congress, not from the Commission's own conception of how the existing statute should be rewritten in light of changed circumstances.

⁴⁸ *Id.* at 1195 (quoting *American Tel. & Tel. Co. v. FCC*, 487 F.2d 865, 880 (2d Cir. 1973)).



**APPENDIX:
AUTHORITIES CITED IN
"THE COMMUNICATIONS SATELLITE ACT OF 1962
PREVENTS THE FCC FROM MANDATING LEVEL 3
DIRECT ACCESS TO THE INTELSAT SYSTEM"**

**Warren Y. Zeger
Howard D. Polsky
Keith H. Fagan**

COMSAT Corporation

**Richard E. Wiley
Lawrence W. Secretst, III
Rosemary C. Harold**

Wiley, Rein & Fielding

June 2, 1999

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UNITED SAVINGS ASSOCIATION OF TEXAS v. TIM-
 BERS OF INWOOD FOREST ASSOCIATES, LTD.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
 THE FIFTH CIRCUIT

No. 86-1602. Argued December 1, 1987—Decided January 20, 1988

When a bankruptcy petition is filed, § 362(a) of the Bankruptcy Code provides an automatic stay of actions taken to realize the value of collateral given by the debtor. Section 362(d) authorizes the bankruptcy court to grant relief from the stay “(1) for cause, including the lack of adequate protection of an interest in property of . . . [a] party in interest,” or “(2) with respect to a stay of an act against property,” if the debtor does not have an equity in such property (*i. e.*, the creditor is undersecured) and the property is “not necessary to an effective reorganization.” Section 361 provides that adequate protection of an entity’s interest in property may be provided by granting such relief “as will result in the realization by such entity of the indubitable equivalent of its interest.” After respondent filed a petition for reorganization under Chapter 11 of the Code, petitioner, an undersecured creditor, moved the Bankruptcy Court for relief from the § 362(a) stay on the ground that there was a lack of “adequate protection” of its interest within the meaning of § 362(d)(1). The court granted relief, conditioning continuance of the stay on monthly payments by respondent on the estimated amount realizable on the foreclosure that the stay prevented. The District Court affirmed, but the Court of Appeals reversed.

Held: Undersecured creditors are not entitled to compensation under § 362(d)(1) for the delay caused by the automatic stay in foreclosing on their collateral. Pp. 370-380.

(a) The language of other Code provisions that deal with the rights of secured creditors, and the substantive dispositions that those provisions effect, establish that the “interest in property” protected by § 362(d)(1) does not include a secured party’s right to immediate foreclosure. First, petitioner’s contrary interpretation contradicts the carefully drawn substantive disposition effected by § 506(b), which codifies the pre-Code rule denying undersecured creditors postpetition interest on their *claims*. Had Congress nevertheless meant to give undersecured creditors interest on the value of their *collateral*, it would have said so plainly in § 506(b). Moreover, the meaning of § 362(d)(1)’s “interest in property” phrase is clarified by the use of similar terminology in § 506(a), where it must be interpreted to mean only the creditor’s security inter-

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 ms. *Ante*, at 352,

security, and apply it in payment of the debt. If that right is embraced by the term, it is obviously not adequately protected unless the secured party is reimbursed for the use of the proceeds he is deprived of during the term of the stay.

The term "interest in property" certainly summons up such concepts as "fee ownership," "life estate," "co-ownership," and "security interest" more readily than it does the notion of "right to immediate foreclosure." Nonetheless, viewed in the isolated context of §362(d)(1), the phrase could reasonably be given the meaning petitioner asserts. Statutory construction, however, is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear, see, e. g., *Sorenson v. Secretary of Treasury*, 475 U. S. 851, 860 (1986), or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law, see, e. g., *Pilot Life Ins. Co. v. Dedeaux*, 481 U. S. 41, 54 (1987); *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U. S. 609, 631–632 (1973); *Jarecki v. G. D. Searle & Co.*, 367 U. S. 303, 307–308 (1961). That is the case here. Section 362(d)(1) is only one of a series of provisions in the Bankruptcy Code dealing with the rights of secured creditors. The language in those other provisions, and the substantive dispositions that they effect, persuade us that the "interest in property" protected by §362(d)(1) does not include a secured party's right to immediate foreclosure.

Section 506 of the Code defines the amount of the secured creditor's allowed secured claim and the conditions of his receiving postpetition interest. In relevant part it reads as follows:

"(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, . . . and

REGIONS HOSPITAL, Petitioner,

v.

Donna E. SHALALA, Secretary of
Health and Human Services.

No. 96-1375.

Argued Dec. 1, 1997.

Decided Feb. 24, 1998.

Teaching hospital which received Medicare reimbursement for graduate medical education costs (GME) appealed to Provider Reimbursement Review Board (PRRB) challenging validity of reaudit rule, after reaudit determined that hospital's total allowable base year GME costs were \$5,916,868, down from an original "notice of amount of program reimbursement" (NAPR) of \$9,892,644. PRRB responded that it lacked authority to invalidate reaudit regulation, and hospital sought expedited judicial review. The United States District Court for the District of Minnesota granted summary judgment to the Secretary of Health and Human Services (HHS), and hospital appealed. The Eighth Circuit Court of Appeals, 91 F.3d 57, affirmed, and hospital petitioned for certiorari. The Supreme Court, Justice Ginsburg, held that: (1) reaudit regulation authorizing fiscal intermediaries to reaudit 1984 base year cost report submitted by hospital seeking Medicare reimbursement for GME costs, to ensure accurate reimbursements in future years, is not an impermissible retroactive rule; (2) GME Amendment providing that hospital's costs for graduate medical education "recognized as reasonable" for 1984 serve as base figure used to calculate GME reimbursements for all subsequent years is ambiguous; (3) reaudit regulation is a reasonable interpretation of GME Amendment; and (4) reaudit regulation does not violate principles of issue preclusion.

Affirmed.

Justice Scalia filed dissenting opinion in which Justice O'Connor and Justice Thomas joined.

1. Courts ⇨100(1)

Legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place.

2. Constitutional Law ⇨188

Prescription is not made retroactive merely because it draws upon antecedent facts for its operation.

3. Social Security and Public Welfare
⇨241.10, 241.30

Medicare regulation authorizing fiscal intermediaries to reaudit 1984 base year cost report submitted by hospital seeking Medicare reimbursement for costs of graduate medical education (GME), to ensure accurate reimbursements in future years, is not an impermissible retroactive rule, as regulation calls for application of cost reimbursement principles in effect at time costs were incurred; moreover, reaudits leave undisturbed actual 1984 reimbursements and reimbursements for any later cost-reporting year on which three-year reopening window has closed, and adjusted reasonable cost figures resulting from reaudits are used solely to calculate reimbursements for still open and future years. Social Security Act, § 1886(h)(2)(A), as amended, 42 U.S.C.A. § 1395ww(h)(2)(A); 42 C.F.R. § 413.86(e).

4. Statutes ⇨219(5)

When Supreme Court examines rule of the Secretary of Health and Human Services (HHS) interpreting statute, Court asks first whether intent of Congress is clear as to precise question at issue; if, by employing traditional tools of statutory construction, Court determines that intent of Congress is clear, that is the end of the matter; but if statute is silent or ambiguous with respect to specific issue, question for Court is whether agency's answer is based on permissible construction of statute.

5. Statutes ⇨219(1)

If agency's reading of statute fills gap or defines term in a reasonable way in light of legislature's design, Supreme Court gives that reading controlling weight, even if it is not answer Court would have reached if question initially had arisen in judicial proceeding.

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calculations or errors." *Tulane*, 987 F.2d, at 796.⁴ Because the Hospital's construction is not an inevitable one,⁵ we turn to the Secretary's position, examining its reasonableness as an interpretation of the governing legislation.

B

[7] The purpose of the GME Amendment was to "limit payments to hospitals" for GME costs. See H.R. Conf. Rep. No. 99-453, p. 482 (1985) (emphasis added). The Secretary's reaudit rule brings the base-year calculation in line with Congress' pervasive instruction for reasonable cost reimbursement. The rule does not permit recoupment of any time-barred 1984 overpayment, but it enables the Secretary, for open and future years, to carry out that official's responsibility to reimburse only reasonable costs, and to prevent payment of uncovered, improperly classified, or excessive costs. See *supra*, at 914.

Until the GME Amendment in 1986, GME costs were determined annually; one year's determination did not control a later year's reimbursement. The GME Amendment, which called for a base-year GME cost determination that would control payments in later years, became law at a time when other Medicare changes were underway, including installation of a new prospective payment system (PPS).⁶ See 54 Fed.Reg. 40301 (1989) (acknowledging that GME costs were not given prompt scrutiny "because of the many changes that were taking place in

Medicare generally"). The GME Amendment introduced the new statutory concept of per-resident GME costs; it was this innovation that caused the Secretary "to examine GME costs that ha[d] been reimbursed in the past and to question the significant variation in costs that ha[d] been allowed." 53 Fed. Reg. 36593 (1988).

Concerned that providers may have been reimbursed erroneously, the Secretary attempted to assure reimbursement in future and still open years of reasonable costs, but no more. To accomplish this, the Secretary endeavored to strip from the base-period amount improper costs, e.g., physician costs for activities unrelated to the GME program, malpractice costs, and excessive administrative and general service costs. The Secretary so proceeded on the assumption that Congress, when it changed the system for GME cost reimbursement, surely did not want to cement misclassified and nonallowable costs into future reimbursements, thus perpetuating literally million-dollar mistakes.

The Hospital maintains it is "irrational" to assume Congress intended the Secretary to reaudit 1984 GME costs outside the three-year reopening window of 42 C.F.R. § 405.1885(a) (1996). We disagree. Because the period for reassessing 1984 NAPRs had closed, the Secretary's reauditing rule, by design, could affect only the base-year per-resident calculation used to compute reimbursements from 1985 onward. In effect, the Secretary altered the reopening period pre-

be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *United States Nat. Bank of Ore. v. Independent Ins. Agents of America, Inc.*, 508 U.S. 439, 455, 113 S.Ct. 2173, 2182, 124 L.Ed.2d 402 (1993) (quoting *United States v. Heirs of Boisjore*, 8 How. 113, 122, 12 L.Ed. 1009 (1849)).

4. The Hospital contends Congress did not delegate authority to the Secretary specifically to reaudit the 1984 base-year amount, in contrast to its express delegation to "establish rules" for computing the number of full-time-equivalent residents under § 1395ww(h)(4). But "the concept of reasonable costs already was a mainstay of Medicare statutes and regulations, [so] there was no need to establish any new rulemaking authority for its determination." *Tulane*, 987 F.2d, at 795, n. 5 (citations omitted). See 42 U.S.C. §§ 1395x(v)(1)(A), 1395hh(a)(1).

5. The dissent acknowledges that, "in isolation the phrase 'recognized as reasonable' is ambiguous," *post*, at 3, but finds clarity when those words are read "in their entire context," *ibid*. We agree that context counts and stress in this regard what the Court has said "[o]ver and over": "In expounding a statute, we must not

6. The PPS scheme established fixed payment rates, based on patient diagnosis, for a provider's operating costs of furnishing in-patient care to program beneficiaries. See 42 U.S.C. § 1395ww(d); *Good Samaritan Hospital v. Shalala*, 508 U.S. 402, 406, n. 3, 113 S.Ct. 2151, 2155, 124 L.Ed.2d 368 (1993). Costs incurred in connection with GME programs were excluded from the PPS scheme. 42 U.S.C. §§ 1395ww(a)(4) and (d)(1)(A).

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Statutes and Statutory Construction

FIFTH EDITION

By NORMAN J. SINGER
PROFESSOR OF LAW
UNIVERSITY OF ALABAMA

1992 Revision

Volume 2A

Cite as: **Sutherland Stat Const § — (5th Ed)**



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§47.01

STATUTORY CONSTRUCTION

the statute cannot be affected by prepassage comments of legislators or even sponsors of the bill. *D. Canale & Co. v. Celauro*, 765 SW2d 736 (Tenn 1989).

⁷**Pennsylvania.** *Gibbons v. New Castle Area School Dist.*, 518 Pa 443, 543 A2d 1087 (1988).

⁸See § 47.23.

⁹**United States.** *United States v. Cardenas*, 864 F2d 1528 (CA10 1989).

Utah. *Hansen v. Wilkinson*, 658 P2d 1216 (Utah 1983).

¹⁰**California.** *Busching v. Superior Court of Ventura County*, 12 Cal 3d 44, 115 Cal Rptr 241, 524 P2d 369 (1974) notes the relevance of rules of grammar to the process of statutory construction.

North Dakota. *State v. Unterseher*, 289 NW2d 201 (ND 1980).

§47.02. The pertinent context.

Inherent in the use of textual considerations as resource materials for the interpretation of statutes is the problem of determining how much of the statutory context of the particular word or passage is relevant and probative for its construction. The risk of misunderstanding as a result of allowing irrelevant portions of a text to influence the meaning attributed to the segment of text being construed is probably just as risky as taking any statement out of context.¹ For example, one state court noted that the words under consideration in a case "order relating thereto," when read in pertinent context could have no sensible meaning except in reference to an action for divorce.²

The following is a guide for determining how much and what kinds of context are relevant and probative for statutory construction:

(1) *Section by section interpretation.* If the meaning of any particular phrase or section standing alone is clear no other section or part of the act may be applied to create doubt.³

(2) *Purview interpretation.* The language of the entire enacted part of the statute must be read together and the determination of ambiguity made upon the basis of the entire enacted part. Matter not part of the purview may not be considered if it creates ambiguity.⁴

(3) *Preamble interpretation.* In case of doubt or inconsistency between language in the enacted part of the statute and the preamble, the preamble controls because it expresses in the most satisfactory manner the reason and purpose of the act.⁵

(4) *The whole act interpretation.* Neither the preamble nor the purview controls, but the entire act must be read together because no part of the act is superior to any other part.⁶

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This latter method is the most realistic in view of the fact that a legislature passes judgment upon the act as an entity, not giving one portion of the act any greater authority than another. Thus any attempt to segregate any portion or exclude any other portion from consideration is almost certain to distort the legislative intent. The "whole act" approach does not preclude giving some portions of the act greater authority to override implications of other portions in interpretation.

The ensuing sections of this chapter deal specifically with what interpretive significance attaches to various kinds of statutory provisions, and with techniques for drawing conclusions from various kinds of textual forms and structures.

¹United States. In re Vause, 886 F2d 794 (CA6 1989).

Colorado. Krieg v. Prudential Property & Casualty Ins. Co., 686 P2d 1331 (Colo 1984).

Louisiana. In re RLV, 484 So 2d 206 (La App 1986).

²District of Columbia. Smith v. Smith, 445 A2d 666 (DC App 1982).

³United States. United States v. Batchelder, 581 F2d 626 (CA7 1978); Preterm, Inc. v. Dukakis, 591 F2d 121 (CA1 1979).

Iowa. State v. Conner, 292 NW2d 682 (Iowa 1980).

See § 46.06.
⁴See §§ 20.07, 46.05, 47.04.

⁵United States. Globe Fur Dyeing Corp. v. United States, 467 F Supp 177 (D DC 1979).

Alabama. Ball v. Jones, 272 Ala 305, 132 So 2d 120 (1961).

Louisiana. In re RLV, 484 So 2d 206 (La App 1986).

Pennsylvania. Fedor v. Borough of Dormont, 36 Pa Commw 449, 389 A2d 217 (1978).

See § 47.04.

⁶United States. Where identical words of phrases are used more than once in an act, they are presumed to have the same meaning wherever they appear unless other indicia compel a different conclusion. Hodgson v. Prophet Co., 472 F2d 196 (CA10 1973).

Iowa. State v. Conner, 292 NW2d 682 (Iowa 1980); Dearinger v. Peery, 387 NW2d 367 (Iowa App 1986).

See § 46.05.

§47.03. Titles.

Under early English parliamentary practice the title of an act was not prepared by the legislative body but was supplied by a clerk of Parliament. Thus English courts correctly said that the title was no part of the act and therefore could not be used to interpret its meaning.¹

This original English doctrine has been frequently asserted in the United States in spite of the fact that the legislature is obliged to provide a title. Additionally, most state constitutions require a