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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **BT North America Inc. Petition for Waiver**
In the Matter of Direct Access to the INTELSAT System,
Report and Order, IB Docket No.: 98-192 (released Sept. 16, 1999)

Dear Ms. Salas,

BT North America Inc., pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. ¶ 1.3, and Section 1.51(c)(1) of the Commission's Rules, 47 C.F.R. ¶ 1.51(c)(1), hereby files an original and four copies of its Petition for Waiver of the Commission's Report and Order in the above-captioned proceeding.

Please direct questions concerning this Petition to the undersigned at (202) 434-8873.

Respectfully submitted,

Kristen Neller Verderame
Director, US Regulation & Government Relations
BT North America Inc.

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TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	2
II.	THE UNDERLYING PURPOSE OF THE COMMISSION'S FOREIGN SIGNATORY RESTRICTION WILL NOT BE SERVED, AND IN FACT WILL BE FRUSTRATED, BY ITS APPLICATION TO BT	2
A.	The Commission's Analysis Does Not Apply to BT	3
B.	If IUC Rates Were To Be Lowered to Uneconomically Low Levels, BT Could Not Recoup Investment Losses in its Home Market Because the U.K. Satellite Services Market Is Highly Competitive	5
C.	If IUC Rates Were To Be Lowered to Uneconomically Low Levels, BT Could Not Recoup Investment Losses in the U.S. Market Because of the Existing Competitive Satellite Services Market and the Likelihood of Additional Competition from Direct Access	14
III.	GRANT OF BTNA'S REQUEST FOR WAIVER IS IN THE PUBLIC INTEREST	15
IV.	BTNA AND BT REPRESENT THAT THEY WILL NOT INITIATE OR SUPPORT A REDUCTION IN THE IUC TO UNECONOMICALLY LOW LEVELS	17
V.	CONCLUSION	19

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

BT NORTH AMERICA INC. PETITION FOR WAIVER

BT North America Inc. (“BTNA”) hereby submits, pursuant to Section 1.3 of the Commission’s Rules, 47 C.F.R. § 1.3, a Petition for Waiver in the above-captioned proceeding.¹ Specifically, BTNA asserts that the Commission should grant it a waiver from restrictions imposed by the *Direct Access Order* on foreign Signatories and their greater than fifty percent owned affiliates (collectively “foreign Signatories”) when such entities seek direct access to INTELSAT for service between the U.S. and any foreign country in which the Signatory uses fifty percent or more of all INTELSAT capacity consumed in that country.²

¹ *In the Matter of Direct Access to the INTELSAT System*, IB Docket No. 98-192, File No. 60-SAT-ISP-97, FCC 99-236 (released Sept. 16, 1999) (hereafter “*Direct Access Order*” or “*Order*”). BTNA is 100 percent owned by British Telecommunications plc (“BT”), the U.K. Signatory. Because BT currently uses more than 50 percent of all INTELSAT capacity consumed in the U.K., this rule restricts BTNA from obtaining direct access in the U.S. on the U.S.-U.K. route.

² Id. at ¶ 98.

I. INTRODUCTION AND SUMMARY

The Commission has authority to waive its rules if there is “good cause” to do so.³ The Commission may exercise its discretion to waive a rule if (a) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case; or (b) in view of unique or unusual circumstances, deviation from the rule would serve the public interest.⁴

As demonstrated below, the underlying purpose of the Commission’s foreign Signatory restriction will not be served, and in fact will be frustrated, by its application to BTNA. Furthermore, the public interest will be served by grant of BTNA’s Petition for Waiver. The factual demonstrations alone merit grant of the requested waiver. Nonetheless, to completely dispel any remaining concerns on the part of the Commission, BT represents that it will not initiate or support any proposal to the INTELSAT Board of Governors advocating the reduction of the INTELSAT utilization charge (“IUC”) to uneconomic levels, unless it is required to do so by other parties in its role as U.K. Signatory.

II. THE UNDERLYING PURPOSE OF THE COMMISSION’S FOREIGN SIGNATORY RESTRICTION WILL NOT BE SERVED, AND IN FACT WILL BE FRUSTRATED, BY ITS APPLICATION TO BT

The purpose of the Commission’s restriction on direct access for foreign Signatories is to eliminate any potential incentive for foreign Signatories to depress IUC rates to uneconomically low levels, in order to ensure effective competition in the U.S.

³ 47 C.F.R. § 1.3 (1997).

⁴ Northeast Cellular Telephone Company, L.P. et al., v. FCC, 897 F. 2d 1164, 1166 (D.C. Cir. 1990), citing WAIT Radio v. FCC, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

direct access market.⁵ Under the Commission's reasoning, foreign Signatories desiring to begin or expand operations in the United States may wish to purchase capacity directly from INTELSAT, and would, accordingly, benefit from lower prices. Further, because many foreign Signatories are vertically integrated, IUC rates for such Signatories constitute primarily a transfer price, and any returns on investment lost due to a lower IUC can be made up by the lower "price" paid for usage of INTELSAT. Thus, the reasoning goes, foreign Signatories will work to lower the IUC in order to gain an anti-competitive advantage in the U.S. market.

A. The Commission's Analysis Does Not Apply to BT

Whatever the validity of the Commission's reasoning,⁶ the analysis on which this reasoning is based does not apply to BT, and for this reason, a waiver from the restriction for BTNA is required. BT does not have the economic incentive to depress IUC rates for direct access to uneconomically low levels, and, therefore, would not initiate or support any efforts by the INTELSAT Board of Governors to do so. Lowered IUC rates will not give BT any competitive advantage in the U.S. market since all Level 3 direct access users in the United States would be charged the same IUC rates that would be charged to BT. Therefore, BT would have no incentive to seek to lower IUCs to uneconomic levels in the United States.

⁵ See *Direct Access Order* at ¶¶ 96–98.

⁶BTNA does not believe that the Commission's reasoning overall is sound with respect to any foreign Signatory. See *BT North America Inc. Petition for Reconsideration*, IB Docket No. 98-192, File No. 60-SAT-ISP-97, FCC 99-236 (filed Nov. 8, 1999) ("*Petition for Reconsideration*"). See also Affidavit of John H. Preston, November 8, 1999, at 7 n.23 and accompanying text ("Preston Aff."). The discussion in this Petition for Waiver, however, is limited to the application of the restriction to BTNA.

Furthermore, the same lowered IUC rates would extend to all users (including all Signatories and, where permitted, all Level 3 and Level 4 direct access users) in all other countries.⁷ Lowered IUC rates would benefit (in effect, subsidize) Level 3 direct access users that would not be affected by lower investment returns, at the expense of Signatories and Level 4 users that would be harmed by these lower investment returns. Moreover, because BT has an investment share that notably exceeds its utilization share,⁸ BT would be subsidizing all investors whose utilization shares exceed their investment shares if IUCs were lowered to uneconomic levels, while suffering even greater losses in investment returns.⁹

Thus, BT has two compelling reasons to oppose lowering IUCs to uneconomically low levels: (1) since all INTELSAT users are charged the same IUC rates, BT will gain no competitive advantage in the United States or elsewhere from IUCs that are priced below cost; (2) since BT is an investor, it would suffer lower investment returns due to below-cost IUCs -- losses exacerbated by the notable amount by which

⁷ IUC rates are geographically-neutral (*i.e.*, the same rate is charged on a per-service basis in every country around the world). *See* INTELSAT Operating Agreement, Article V(d) and Article III(a). *See also* *Preston Aff.* at 4, 8-9.

⁸ As noted below, BT's investment share is 5.073892, while its utilization share is only 4.338590. Therefore, BT's investment share is 16.9 percent greater than its utilization share. *See* "March 1, 1999 Determination of Investment Shares," INTELSAT, and <http://www.intelsat.int/about/signat-u.htm>. Indeed, BTNA demonstrates in its *Petition for Reconsideration* that because BT's INTELSAT investment share exceeds its utilization share, BT has economic incentives to strongly oppose efforts to depress IUCs to uneconomically low levels. *See* *Petition for Reconsideration* at 13.

⁹ *See* *Petition for Reconsideration* at 9, "{c}learly, no rational Signatory would lower its cost of entry into the U.S. market in a manner that would extend the same benefits to its competitors, at a potential cost to itself of a reduced return on its INTELSAT investment based on utilization in markets outside the United States (*i.e.*, in countries where it is a Signatory or Level 4 user)."

BT's investment share exceeds its underlying utilization share -- placing BT in a disadvantageous position vis-à-vis users that do not invest or whose investment shares do not exceed their utilization shares.

As demonstrated below, the high degree of competition in the U.S. and U.K. satellite services markets would clearly prevent BT from recouping a reduced return on investment through higher end-user revenue margins.

B. If IUC Rates Were To Be Lowered to Uneconomically Low Levels, BT Could Not Recoup Investment Losses in its Home Market Because the U.K. Satellite Services Market Is Highly Competitive

Even though BT has no economic incentive to lower the IUC, if we assume *arguendo* that it could successfully advocate such a lowered IUC,¹⁰ BT would never be able to recoup its substantial investment losses in its home market because of the particularly competitive market for satellite services in the U.K.¹¹ At present, there are 23 investing Level 4 customers in the U.K.¹² Notably, at least 9 of these entities are U.S.-owned companies, including two subsidiaries of Comsat. These entities and their INTELSAT utilization shares are shown in the following table:¹³

¹⁰ Even if BT were to advocate a lowered IUC at the Board of Governors, it is extremely unlikely that it would be successful. *See Petition for Reconsideration* at 10–13.

¹¹ The only market in which BT could logically recoup losses by charging a higher market price for INTELSAT capacity would be in a market in which it would have the market power to demand a higher price. The U.K. is the only market in which one could argue that BT may conceivably have such market power, and therefore, this is the only market (other than the U.S.) that will be considered in this discussion.

¹² It is interesting to note that the number of competitors in the market has increased, from 20 to 23, during the short pendency of this proceeding. *Compare Comments of BT North America Inc.*, IB Docket No. 98-192, File No. 60-SAT-ISP-97, FCC 99-236 (Dec. 22, 1998), at 7.

¹³ All referenced investment shares are as of November 17, 1999, and are available on INTELSAT's world-wide web page: <http://www.intelsat.int/about/signat-u.htm>.

Cable & Wireless PLC	0.389728
Cable and Wireless Communications PLC	1.179160
Caprock U.K. Ltd.	0.000001
CBS Overseas Inc.	0.000001
Comsat General (U.K.)	0.215415
Comsat International Ventures	0.000001
Data Marine Systems Limited	0.000001
Datasat Comm.	0.054699
Detesat Deutsche Telekom	0.005459
Globecast Northern Europe Ltd.	0.014045
Kingston TLI	0.002104
Loral Orion	0.000001
Loral Orion Europe GmbH	0.001060
Lyman Brothers	0.016837
Multipoint Communications Ltd.	0.000001
Muslim Television	0.000001
Natl Transcom. Ltd.	0.000001
Newsforce	0.044058
RedWing Satellite Solutions Ltd.	0.011308
Satellite Media Services	0.002070
Spacotel International	0.006084
TeleBermuda International Ltd.	0.003285

Williams Communication Group Ltd.	0.000001
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The combined INTELSAT investment share of these Level 4 investors is 1.954320. BT's current investment share is 5.073892, yielding a total share for U.K. companies of 7.028212. The aggregate investment of Level 4 investors in the U.K. has grown significantly over the last few years, both absolutely and relative to total U.K. investment.¹⁴

The aggregate utilization of Level 4 investors in the U.K. has also grown significantly over the last few years, both absolutely and relative to total U.K. utilization. Between 1997 and 1998, the aggregate utilization of Level 4 investors in the U.K. increased from 1.935426 percent of total INTELSAT utilization to 2.146497 percent, an increase of 10.9 percent.¹⁵ Relative to total U.K. utilization of INTELSAT services,

¹⁴ Between 1998 and 1999, for example, the aggregate investment of Level 4 investors in the U.K. increased from 1.606554 percent of total INTELSAT investment to 1.954320 percent, an increase of 21.1 percent. Relative to total U.K. investment in INTELSAT, Level 4 investment increased from 22.0 percent in 1998 to 27.7 percent in 1999, an increase of 25.9 percent. Due to the competitive inroads of Level 4 investors in the U.K., BT's share of total U.K. investment in INTELSAT fell from 78.0 percent in 1998 to 72.3 percent in 1999, a decline of 7.3 percent. See INTELSAT 1997 Annual Report; INTELSAT 1998 Annual Report. Investment shares are determined on March 1 of each fiscal year, and are based in part on utilization shares for the prior fiscal year. Thus, the investment share calculated on March 1, 1998 (the 1998 investment share) is based, in part, on the utilization share for the fiscal year March 1, 1997 to February 28, 1998. INTELSAT investors also may request reductions or increases in their investment shares below or above their utilization shares. These requests may or may not be granted. In 1998 and 1999, BT received an increase in its investment share above its utilization share, while several Level 4 U.K. investors received reductions in their investment shares below their utilization shares.

¹⁵ See "1 March 1998 Determination of Investment Shares" and "1 March 1999 Determination of Investment Shares," INTELSAT. Utilization figures are for the fiscal year ending February 28, 1998 (based on 1997 utilization) and February 28, 1999 (based on 1998 utilization).

Level 4 utilization increased from 28.1 percent in 1997 to 33.1 percent in 1998, an increase of 17.8 percent.¹⁶ Due to competitive inroads of Level 4 investors in the U.K., BT's share of total U.K. utilization of INTELSAT services fell from 71.9 percent in 1997 to 66.9 percent in 1998, a decline of 7.0 percent.¹⁷

Of the Level 4 competitors, most are highly-competitive, global service providers. A good example is Kingston TLI ("Kingston"), a satellite services provider that has two teleport sites and high capacity links into London that provide national connectivity, as well as access to European and transatlantic fiber that allows it to provide Internet connectivity to Internet Service Providers ("ISPs").¹⁸ Kingston is one of many strong competitors in the U.K. satellite services market that offers a combination of facilities, from television production and fully-engineered broadcast systems through to satellite distribution.¹⁹

Another significant competitor in the U.K. for satellite broadcast services, Newsforce, operates the largest world-wide network of Digital Satellite Newsgathering ("DSNG") systems.²⁰ Newsforce's DSNG systems are deployed from international

¹⁶ Id.

¹⁷ Id.

¹⁸ See "Kingston TLI Implements Major INTELSAT 62 Degrees E Earth Station, Expanding Indian Ocean Region Coverage," PR Newswire (Aug. 31, 1999).

¹⁹ Id. Just recently, Kingston announced the implementation of a new earth station to carry traffic between the U.K. and the Indian Ocean Region ("IOR") using INTELSAT space segment that will enable it to provide a variety of carriers, including ISPs, with a new route to the IOR, as well as to Asia, the Middle East, Africa and Europe. It is interesting to note that Kingston began as a local telephone company, and has vertically integrated upwards to offer the wide variety of services discussed above.

²⁰ See www.newsforce.com.cy.

operations centers, and cover breaking news stories to cultural and sporting events. A partner with Newsforce under the France Telecom umbrella is Globecast, one of the world's largest global communications providers of local, regional, world-wide or multi-domestic broadcasting, with an annual turnover of over \$400 million in 1998.²¹ Globecast Northern Europe, a direct competitor of BT in broadcast services in the U.K., specializes in the management and distribution of audio and video signals via satellite to the broadcast and business community world-wide. There are numerous other such global competitors active in the U.K. market for satellite services, including Loral Orion, Satellite Media Services, Datasat Communication, to name just a few, resulting in the most competitive satellite services market in Europe.²²

In addition to Level 4 direct access competitors in the U.K., BT faces significant competition from users of other satellite systems that serve the U.S.-U.K. route, including PanAmSat, Columbia, Telecom2, and Loral Orion. Further, the large number of competing satellite systems in the U.K. market contributes to extremely competitive pricing for satellite services in the market overall. EUTELSAT and several local satellite operators have been intensifying competition in the market for some time.²³ SES, the largest satellite operator in Europe, is judged to be ahead of EUTELSAT in marketing

²¹ See www.globecast.com.

²² For example, in terms of Level 4 investment in INTELSAT, the U.K. satellite services market is the largest in Europe by far. Currently, of the total number of Level 4 investors in Europe (31), 23 of them, or over 74 percent, are located in and active in the U.K. market. See <http://www.intelsat.int/about/signat-a.htm>.

²³ See "A Stake in Space," *The Sunday Telegraph Limited*, p. 7 (June 21, 1998), discussing the history of satellite services in the U.K. and highlighting Societe Europeene des Satellites ("SES"), the biggest satellite operator in Europe.

and coverage.²⁴ SES operates the Astra 1 A and Astra 1 B satellites which broadcast BSKyB in Europe.

Transatlantic undersea cables also provide significant competitive constraints on BT and other users of INTELSAT services on the U.S.-U.K. route. Capacity on the transatlantic route has been increasing at very high rates and, based on announced plans, will continue to increase at very high rates over the next several years.²⁵ *Telegeography 1999* notes that the cost of the transmission of digitized voice or data traffic over new trans-oceanic cables “is diminishing exponentially . . . The per minute cost of carrying a voice call on such cables is miniscule.”²⁶ Because of the multiple transatlantic cables that serve the U.S.-U.K. route, and the low prices for sending traffic via cable, BTNA uses cable, rather than satellite, to transport the majority of voice and data on behalf of customers for that route. As the Commission correctly stated, “to the extent major traffic routes are likely to have the most communications transport alternatives, it is possible to argue that direct access to INTELSAT will be most desirable for transporting traffic not to major Signatory countries, but the smaller, so-called ‘thin route’ countries.”²⁷ Thus, with respect to the U.S.-U.K. route, BTNA utilizes INTELSAT capacity in the United

²⁴ Id.

²⁵ *Telegeography 1999*, pp. 90-93. The Commission has well-recognized the competitive nature of the U.S.-U.K. cable route. See *In the Matter of The Merger of MCI Communications Corporation and British Telecommunications plc*, GN Docket 96-245, FCC 97-302 (released Sept. 24, 1997), ¶ 94-101, 139-141; *In the Matter of Application of Worldcom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to Worldcom, Inc.*, CC Docket No. 97-211, FCC 98-225 (released Sept. 14, 1998), ¶ 89-91, 102-108.

²⁶ *Telegeography 1999*, p. 20.

²⁷ *Direct Access Order* at 41, n. 224.

States primarily to provide occasional-use video services between the United States and the U.K.

An explosion of products and services offered via satellite has contributed to increased demand for capacity in the U.K., and lower prices for services as competition has increased for customers. The U.K. was the first country in Europe to launch a direct-to-home (“DTH”) platform where there was almost no cable penetration, and only four terrestrial channels.²⁸ The analog platform owned by BskyB was launched in February of 1989, and today it serves about 3.5 million subscribers (with an additional 3.4 million receiving signals via cable systems).²⁹ Just last year BskyB launched its new digital DTH network and already has 550,000 subscribers.³⁰

The broadband and Internet boom has also contributed substantially to the explosion of satellite services in the U.K. and the commensurate increase in capacity demand for additional products and services. According to INTELSAT, while satellite traffic volumes increased by 3 to 10 percent annually over the last several decades, now, due to the explosion of customer demand for Internet services via satellite, the Internet portion of INTELSAT’s businesses is growing at a rate of 30 to 50 percent a year.³¹ As a

²⁸ See “*Broadcasting in Europe: Divided We Stand*,” *Satellite Communications*, Vol. 23, No. 9, p. 34 (Sept. 1, 1999).

²⁹ Id.

³⁰ Id.

³¹ “*Pioneers of a Weightless Cargo*,” *Telecommunications (International Edition)*, Vol. 33, No. 7, p. S42-46 (July 1999) (“*Pioneers*”).

result, “Internet is booming at U.K. teleports including BT’s London Teleport, GlobeCast, Northern Europe, Kingston/TLI and Satellite Media Services.”³²

Finally, the advancement of terrestrial media has increased competition in the market and forced satellite services to reduce prices in order to remain competitive. For example, digital terrestrial television (“DTTV”) has recently taken off in the U.K. DTTV began first in the U.K. in November of 1998, and it is predicted that most countries in Europe will adopt DTTV over the next three years.³³ In the U.K., the digital terrestrial and satellite platforms have already become highly competitive with one another.³⁴

Not surprisingly, the number of commercial teleports in the U.K. has increased substantially over the last few years to meet competition and increased demand. Greater London alone has no fewer than six active operators.³⁵ These teleports do more than simply uplink or downlink signals. While broadcast video remains 80 to 90 percent of the revenue mix for commercial teleports, these businesses also have been successful in adding other products to their portfolio, such as a broad range of telecommunications services, including switched voice, ISDN, LAN, Internet access, Internet site design and web hosting, and videoconferencing.³⁶ These expanded portfolios have resulted in an

³² Id.

³³ Id.

³⁴ Id.

³⁵ See *Pioneers*. “While the teleport industry was born in the U.S., it is anything but an U.S.-only industry today. Wherever deregulation has been effective in opening up the satellite market, teleports have quickly taken root. In the U.K., for example, greater London boasts no fewer than six active operators.”

³⁶ Id. A similar outgrowth has emerged as partnerships between satellite and telephony providers has taken off. Broadsystem recently teamed with Sky Television to provide

increased demand for bundled services that include satellite offerings and require additional satellite capacity.

As described in this section, BT faces significant competitive constraints on INTELSAT's U.S.-U.K. route from numerous and growing Level 4 investors in the U.K., from users of competing satellite systems on the U.S.-U.K. route, and from users of extremely low-cost transatlantic cable capacity. In addition, the explosive growth of satellite usage in the U.K. and Europe contributes to a very competitive market in the U.K. for satellite services of all types.

Should IUCs be lowered to uneconomic levels, BT would have to raise retail prices above current levels to recoup the investment loss it would suffer as described in Section I. A. above. However, BT will be unable to do this. First, BT will continue to face competition from Level 4 investors in the U.K. In fact, BT will be at a competitive disadvantage relative to these Level 4 investors, since none of these Level 4 investors will suffer an investment loss as a result of lower IUCs.³⁷ Second, BT would continue to face competitive pressure from users of competing satellite systems and undersea cables.

discounts on local, long distance, international and premium rate calls to Sky's DTH satellite subscribers, a service called "SkyDial." See "Card Tricks; Telephony in Europe; View from Europe," *Satellite Communications*, Vol. 22, No. 3, p. 18 (March 1, 1998). These partnerships are helping to fuel the expanding market for U.K. satellite services through bundled packages. Indeed, some U.K. telephony providers, such as Kingston, discussed above, have vertically integrated upward to provide satellite along with telephony services.

³⁷ Most of these Level 4 investors currently have investment shares equal to utilization shares. Three U.K. Level 4 investors have utilization shares exceeding their investment shares. These three Level 4 investors would be in fact subsidized by Signatories with excess investment shares if IUCs were lowered to uneconomically low levels. See "March 1, 1999 Determination of Investment Shares," INTELSAT.

As a consequence, BT will have no opportunity to make up for the lost investment returns by raising retail rates in its home market.

C. If IUC Rates Were To Be Lowered to Uneconomically Low Levels, BT Could Not Recoup Investment Losses in the U.S. Market Because of the Existing Competitive Satellite Services Market and the Likelihood of Additional Competition from Direct Access

Given the substantial development of the U.S. satellite services market to date, it appears that the U.S. market will (or has already) become as competitive as the U.K. market, if not more so, over the next few years. Satellite telephony has its roots in the United States, with at least four major competitors developing or already operating services.³⁸ The market for digital satellite television has developed at a substantial rate over the last two years alone.³⁹ The well-developed market for VSAT (very small aperture terminals) services has already adapted to new business and consumer

³⁸ The leading major proposals for global telephony by satellite are Iridium, Global-Star, ICO and Odyssey, all U.S.-based companies. Notwithstanding the financial difficulties experienced by some of these entities, the U.S. market for satellite telephony continues to develop. See generally “*Effective Customer Care and Billing for Global Satellite Systems*,” *Satellite Communications*, Vol. 21, No. 5, p. 46 (May 1997).

³⁹ See “*DBS Still Going Strong*”, *Satellite Communications*, Vol. 22, No.2, p. 46 (Feb. 1998). “Digital satellite television has been one of the fastest selling consumer electronics products in U.S. history. As of September 30, 1997, approximately 5.6 million U.S. households subscribed to direct broadcast satellite (DBS) and other digital direct to home satellite services. This installed base represents a greater than 100 percent increase from the approximately 2.2 million DBS subscribers as of the end of 1995 and more than ten times the approximately 500,000 DBS subscribers as of the end of 1994.

“The market for digital satellite products and services is growing and there is significant unsatisfied demand for high quality, reasonably priced television programming. Of the approximately 96 million television households in the U.S., more than 60 million subscribers pay an average of \$ 34 per month for multi-channel programming services.” See also “*Digital Bedfellows: Cable and Satellite Television*,” *Satellite Communications*, Vol. 21, No. 4, p. 44 (April 1997).

requirements for data and Internet services.⁴⁰ Even at this early stage in the burgeoning market for Internet services via satellite, U.S. teleports are having difficulty keeping up with demand.⁴¹ Clearly, direct access will reduce the costs for additional competitors to enter and participate in the U.S. market, resulting in increased competition. Therefore, for the same reasons applicable in the U.K., BT would be unable to recoup the losses it would incur from a reduced IUC by operations in the U.S. direct access market.

Contrary to the Commission's assumptions, BT would not benefit from a lowered IUC, but rather, would suffer a loss that it would not be able to recover. Thus, the concerns which led the Commission to restrict foreign Signatory direct access do not apply to BT, and the purpose of the restriction would not be served by its application to BT.

III. GRANT OF BTNA'S REQUEST FOR WAIVER IS IN THE PUBLIC INTEREST

BTNA's participation in the U.S. direct access market on the U.S.-U.K. route would serve the public interest because it would enhance competition and provide U.S. and U.K. end users with extensive English-language programming at lower prices.

BTNA Broadcast Services is the division of BT that provides occasional-use video uplink

⁴⁰ See *"The Need for Speed: VSAT Systems Offer Faster Solutions to an Increasingly Ravenous Globe,"* Satellite Communications, Vol. 22, No. 8, p. 38 (Aug. 1998).

⁴¹ See *Pioneers*. "Teleports in the U.S. are therefore facing a booming market for connecting overseas ISPs and corporate offices via satellite to the U.S. Internet backbone. One example is the Holmdel Teleport of ICG Satellite Services. Brent Perrott, director of sales for international voice and data, stated that Holmdel can barely keep up with demand for Internet via satellite services."

and full-time broadcast services from the United States to various international points.⁴² Outside the United States, Broadcast Services has an extensive international network, operating dozens of teleport facilities, with approximately 100 dishes and a fleet of 44 satellite trucks and flyaways, and providing transmission service to hundreds of broadcast channels. By 1998, Broadcast Services had spent \$9 million on 36 transportable earth stations to meet broadcasters' requirements for coverage of international sporting and news events. In addition to the company's facility in Washington, D.C., the company operates five facilities in the U.K., with other facilities in Paris, Moscow, Brussels, Berlin, and Tel Aviv. Broadcast Services also has a range of remotely managed on-site systems at customer sites in Germany, Italy, and Benelux.

Where permitted, the company's teleports uplink to all major satellite systems, including INTELSAT, EUTELSAT, Astra, New Skies Satellites, Orion, and Panamsat, and on behalf of major broadcast and cable programming clients around the world, such as ABC, CBS, NBC, CNN, BBC, Canal+, Telepiu, Rai, ITV Sport, EBU, Canal Antilles, TF1, Mnet and Star TV. In Europe, Broadcast Services works with the U.S. news networks and cable broadcasters, including MTV, NBC, HBO, and Nickelodeon. BTNA transmits, on behalf of U.S. broadcasters, a variety of services providing coverage of major news and sporting events such as the Wimbledon Tennis Championships and the '96 Atlanta Olympics transmitted live to the U.K. for the BBC.

Because of its international end-to-end network of facilities, Broadcast Services is able to provide customers with uplink, space segment, and downlink services, providing a customer-friendly alternative to the traditional approach of obtaining these services

⁴² BT also operates a similar but separate Broadcast Services division out of the U.K.

through separate suppliers. BTNA has found U.S. customers very receptive to its “one-stop shop” offering for satellite services.⁴³

Through the commonality of language and its extensive around-the-world network and broad client base, Broadcast Services is able to offer a wide range of English-language programming between the United States and the U.K. The current restriction would foreclose both U.S. and U.K. consumers from benefiting from the lower, competitive prices for these services that direct access would allow. Thus, the public interest would be well-served by allowing BTNA to have direct access to INTELSAT space segment facilities on the U.S.-U.K. route.

Moreover, the restriction on BTNA would frustrate the Commission’s purpose of encouraging competition in the U.S. direct access market by precluding a potential competitor from competing on equal terms for the business of retail customers in the United States. Given BTNA’s substantial expertise in providing transatlantic satellite and broadcast services, restricting BTNA’s participation in the U.S. direct access market limits and distorts competition on the U.S.-U.K. route.

IV. BTNA AND BT REPRESENT THAT THEY WILL NOT INITIATE OR SUPPORT A REDUCTION IN THE IUC TO UNECONOMICALLY LOW LEVELS

BTNA and BT are so certain that a lowering of the IUC to uneconomically low levels would never be in their commercial interests that the parties represent that they will not initiate or support any proposal to the INTELSAT Board of Governors advocating the

⁴³ ABC has stated that the network prefers using transmission providers such as BT that can handle all segment needs for a single feed. See “*British Telecom Upgrades D.C. Broadcast Center and Plans Others*,” *Satellite News*, Vol. 21, No. 31 (Aug. 3, 1998).

reduction of IUC prices to uneconomic levels⁴⁴ unless BT is required to do so by other parties (e.g., the U.K. Government) in its role as U.K. Signatory. Because the Commission's only stated reason for restricting direct access to foreign Signatories was to foreclose the opportunity for foreign Signatories to depress IUC rates for direct access to uneconomically low levels, the parties' representation should completely dispel any and all remaining concerns that the Commission may have in this regard.

⁴⁴ The Commission defines "uneconomically low levels" to be "levels that do not reflect INTELSAT's full costs of providing direct access in the U.S. market." See *Direct Access Order* at ¶ 96.

V. CONCLUSION

For the foregoing reasons, BTNA respectfully requests that the FCC grant a waiver to BTNA with respect to the restrictions imposed in the *Direct Access Order* on foreign Signatories and their greater than 50 percent owned affiliates, thereby allowing BTNA to purchase direct access in the U.S. for service to or from any specific foreign country in which BT itself uses 50 percent or more of all INTELSAT capacity.

Respectfully submitted,

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