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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

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

To: The Commission

**OPPOSITION OF COMSAT CORPORATION TO  
PETITIONS FOR RECONSIDERATION**

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**OPPOSITION OF COMSAT CORPORATION TO  
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Pursuant to Section § 1.429(f) of the Commission’s Rules, COMSAT Corporation (“COMSAT”) hereby opposes the Petitions for Reconsideration of the Commission’s Report and Order in the above-captioned proceeding (“*Order*”) filed by BT North America Inc. (“BTNA”) and MCI Worldcom, Inc. (“MCI Worldcom”).<sup>1</sup>

**INTRODUCTION AND SUMMARY**

The two petitions for partial reconsideration filed in this proceeding should be denied. Each focuses on a different narrow sub-issue which was correctly decided.<sup>2</sup>

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<sup>1</sup> Sprint Communications Company LP, which originally joined MCI Worldcom as a co-petitioner, has since withdrawn. *See* Withdrawal of Petition for Limited Reconsideration of Sprint Communications Company LP, IB Docket No. 98-192, File No. 60-SAT-ISP-97 (filed Dec. 22, 1999).

<sup>2</sup> COMSAT’s arguments herein, which concern only the two discrete sub-issues raised by the Petitioners, should not be construed as any implicit endorsement of the FCC’s principal determination in this proceeding—that so-called “Level 3” direct access is lawful in the United States. To the contrary, COMSAT is challenging the

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BTNA, a subsidiary of the United Kingdom's Signatory to INTELSAT, complains that the Commission has no justification for prohibiting foreign Signatories and their affiliates from purchasing direct access in the U.S. for service to or from any specific foreign country in which the Signatory itself uses 50 percent or more of all INTELSAT capacity consumed in that country. Because BTNA fails to refute the FCC's well-reasoned determination that the unfettered entry of foreign Signatories into the U.S. international telecommunications marketplace via INTELSAT would give those entities both the means and opportunity to distort competition, the Commission's reasonable restriction on foreign Signatory access should be retained.

MCI Worldcom's argument concerning one factor in the Commission's calculation of the "signatory surcharge" is as thin as the petition's two pages of text would suggest. The difference between the Commission's calculation and that of MCI Worldcom appears largely to be the result of a simple accounting error on the part of the petitioner; MCI WorldCom has shown no error in the agency's analysis. The patent inconsequence of this argument suggests that it is nothing but a pretext to slow court review of COMSAT's challenge to the *Order*.

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*Order* in court on the grounds that direct access contravenes the Communications Satellite Act of 1962. *COMSAT Corporation v. FCC*, Docket No. 99-1412 (D.C. Cir. filed October 8, 1999).

**I. BTNA’S PETITION FAILS TO WEAKEN THE FCC’S WELL-REASONED DETERMINATION THAT GRANTING FOREIGN SIGNATORIES DIRECT ACCESS TO THE U.S. MARKET WOULD RESULT IN COMPETITIVE DISTORTIONS**

BTNA contends that procedural and substantive flaws infect the Commission’s decision to bar foreign Signatories from using direct access to INTELSAT facilities as a means of competing against COMSAT and other U.S. service providers for U.S. international traffic to their home countries.<sup>3</sup> BTNA’s procedural argument is contrary to precedent and the facts here, and its substantive argument is neither credible nor supported by record evidence.

**A. The Commission Provided Adequate Notice and Opportunity for Comment**

As a preliminary matter, BTNA’s claim that the FCC failed to provide adequate opportunity for notice and comment before adopting the foreign Signatory restriction is wholly without merit. It is well established that so long as a final rule adopted by an agency is a “logical outgrowth” of proposed rules, the exact result reached after a notice and comment rulemaking need not be set out in the initial notice for notice to be sufficient. *See, e.g., Public Service Comm. of the District of Columbia v. FCC*, 906 F.2d 713, 717 (D.C. Cir. 1990).

Here, the foreign Signatory restriction is irrefutably a “logical outgrowth” of the FCC’s stated intention to “take a broad look at Level 3 direct access options in this proceeding” and to address any “competitive concerns ... raised by direct access.”

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<sup>3</sup> Under the *Order*, no bar exists for foreign Signatories to obtain direct access to any other destinations served by INTELSAT. *See Order*, ¶ 99.

*Direct Access to the INTELSAT System, Notice of Proposed Rulemaking*, 13 FCC Rcd 22013, 22014, 22040 (1998) (“*Notice*”). Certainly such “competitive concerns” include the entry of foreign Signatories via the INTELSAT facilities. BTNA’s claim that parties were not given notice of the possibility of a foreign Signatory restriction seems particularly disingenuous in light of the fact that BTNA itself made an *ex parte* presentation to the Commission that specifically addressed such a limitation. *See* Letter from Eric H. Loeb, U.S. Regulatory Counsel to BT, to Magalie Roman Salas, Secretary, FCC, dated Sept. 9, 1999.

Moreover, the *Notice* also clearly raised the possible U.S. policy ramifications of foreign Signatories’ use of direct access by expressly “request[ing] comment on how implementing direct access in the United States might impact the U.S. objective of a privatized INTELSAT.”<sup>4</sup> *Notice*, 13 FCC Rcd. at 22042. It is plain that unfettered access to the U.S. marketplace would negatively affect foreign Signatories’ motivation to support privatization on terms favored by the United States—as COMSAT’s comments in the proceeding repeatedly pointed out. *See, e.g.*, Comments of COMSAT Corporation, IB Docket No. 98-192, File No. 60-SAT-ISP-97, at 67 (filed Dec. 22, 1998).<sup>5</sup> BTNA itself alluded to the issue in its reply comments,<sup>6</sup> and took the matter on

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<sup>4</sup> Moreover, as BTNA well knows, the specific issue of foreign Signatory rights to direct access in the United States also has been a key component of the ongoing policy debate on Capitol Hill concerning INTELSAT privatization. *See, e.g.*, S. 376, 106<sup>th</sup> Cong. (1999). It is plain, then, that the two issues are inextricably linked.

<sup>5</sup> *See also* Reply Comments of COMSAT Corporation, IB Docket No. 98-192, File No. 60-SAT-ISP-97, at 17-23 (filed Jan. 29, 1999). COMSAT stressed that if foreign Signatories were granted Level 3 direct access in the United States without having to sacrifice the benefits inherent in INTELSAT’s privileges and immunities,

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more squarely in *ex parte* communications after the formal pleading cycle closed. *See* Letter from Jeremy B. Miller to Magalie R. Salas, Secretary, FCC, dated May 3, 1999 (focusing on ways in which implementing unfettered direct access in the United Kingdom allegedly had furthered the privatization process). Given this evidence that BTNA had ample notice of—and commented upon—the special concerns raised by unfettered foreign Signatory use of direct access, it is ludicrous for the petitioner to contend that the policy should be stricken on procedural grounds.

**B. Foreign Signatories With Direct Access to the U.S.-  
International Satellite Services Market Would Have Incentives  
to Lower IUCs to “Uneconomically Low Levels”**

In adopting the foreign Signatory restriction, the Commission determined that “foreign Signatory operation in the U.S. market via direct access will pose competition concerns.” *Order*, ¶ 96. The agency reasoned that foreign Signatories would naturally “find low prices for direct access in the U.S. to be in their interest” because such “prices”—otherwise known as the INTELSAT Utilization Charges, or “IUCs,” which Signatories mostly pay to themselves as INTELSAT investors—would allow them to

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these Signatories would have strong incentives to maintain INTELSAT’s current intergovernmental structure and to delay or derail the privatization process. For this reason, the restriction imposed on foreign Signatories’ ability to take advantage of direct access clearly serves the public interest.

<sup>6</sup> Comments of BT North America, Inc., IB Docket No. 98-192, File no. 60-SAT-ISP-97, at 25-26 (filed Jan. 29, 1999) (one-paragraph argument making oblique reference to impact of direct access on “the influence of the U.S. in INTELSAT”). That BTNA chose not to make more of its own argument during the formal pleading cycle can hardly justify reconsideration now.

develop their U.S. activities at artificially low prices, thereby unfairly undercutting their U.S. rivals. *Id.* Moreover, the FCC found that “[t]he fact that Signatories share in INTELSAT’s costs and revenues will not likely offset the incentive to underprice direct access” because foreign Signatories’ potential gains in the U.S. marketplace would more than offset any theoretical lost return from their INTELSAT investment. *Id.*

This conclusion derives from the record evidence demonstrating that most foreign Signatories are vertically integrated firms in their home markets—and, thus, for them direct access to INTELSAT would be merely an input into the telecommunications services they sell to retail customers, rather than an end product in and of itself. Accordingly, IUC rates for foreign Signatories function primarily as an internal transfer price; within this transfer pricing mechanism any losses due to decreases in the IUC can be offset by lower prices paid for INTELSAT usage. With respect to U.S. market entry, however, those lower input prices would allow foreign Signatories to offer artificially low rates to U.S. retail customers and thereby gain market share, at the expense of COMSAT’s investment return. Thus, the Commission correctly found that foreign Signatories have incentives to depress IUC rates to “uneconomically low levels” which “do not reflect INTELSAT’s full costs of providing direct access in the U.S. market.” *Id.*

BTNA’s arguments to the contrary are unavailing. According to BTNA, “the FCC’s analysis is defective because no foreign Signatory has an economic incentive to establish artificially low IUC prices” and some Signatories actually have incentives to

oppose lower prices “because of the effect of lower IUCs on activities outside the U.S.” BTNA Petition at 7. To support these claims, BTNA asserts that lower IUCs would not give foreign Signatories any competitive advantage because “all carriers and users operating in the U.S. with direct access would be charged the same low rate.” BTNA Petition at 7-8.

This argument is erroneous on several fronts. First, BTNA fails to account for the benefits that foreign Signatories would reap from the existence of artificially low IUCs in their efforts to compete against their primary rivals in the U.S. international telecommunications marketplace—*i.e.*, the U.S.-based carriers. The “equality” of artificially low IUC-based rates in the United States is largely irrelevant to most U.S. carriers, because they transmit most of their traffic on facilities other than INTELSAT (*e.g.*, fiber optic cables and separate satellite systems). Consequently, reductions in the IUC will not significantly reduce the U.S. carriers’ cost of providing service. But foreign Signatories entering (or expanding their presence in) the U.S. international market likely would rely much more heavily on INTELSAT space segment—which, absent the challenged restriction, they could obtain in the United States at FCC-specified rates which amount to a subsidy by COMSAT.

In addition, the availability of below-cost IUCs in the United States would allow foreign Signatories to gain an unfair competitive advantage against U.S. satellite service providers—including but not limited to COMSAT, PanAmSat, Orion, and Columbia. For example, both COMSAT (which the *Order* forces to subsidize the cost of competitor access to INTELSAT) and PanAmSat (which owns and operates the

world's largest satellite system) would be at a clear competitive disadvantage against the foreign Signatories who, in essence, would be subsidized resellers of COMSAT's space segment.

BTNA also purports to show that foreign Signatories with Level 3 direct access in their home countries have additional incentives to oppose below-cost IUCs because any decrease in the IUC would result in a subsidy from the Signatory to competing Level 3 direct access customers in that country. BTNA Petition at 9. In truth, any such incentives would be minimal at best. Because foreign Signatories are still the dominant providers of telecommunications services in virtually all countries that permit direct access, most Signatories face only modest competition from domestic competitors who opt for Level 3 direct access. Generally, these Level 3 entities have both small market shares and marginal INTELSAT utilization levels. Furthermore, foreign Signatories could largely, if not entirely, offset any losses from reduced IUCs in their home markets by increasing rates on other services, such as fees for interconnection to their local networks.

Such down-side risk, if it even exists, would not be enough to deter most foreign Signatories from suppressing IUCs to below-cost levels in order to best position themselves to enter, or expand their presence in, the vast U.S. international marketplace.<sup>7</sup> Indeed, foreign Signatories may be able to reduce IUCs on selective

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<sup>7</sup> Consider, for example, a Signatory with: (1) a home market that is one-tenth the size of the U.S. market; and (2) Level 3 direct access customers with a five percent market share in this market. In this case—even assuming that the Signatory is unable to offset losses resulting from reductions in the IUC by increasing rates on other services in its home market—the Signatory would need only a 0.5% share of the U.S.

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space segment services that will further their efforts to compete in the U.S. market (e.g., high-volume services) but from which Level 3 competitors in the Signatories' home markets could not readily benefit—thereby eliminating any downside risk at all.

BTNA also asserts that Signatories with investment shares exceeding their utilization levels will have added incentives to oppose artificially low IUCs because such reductions would lead to corresponding decreases in investment returns. BTNA Petition at 13. BTNA fails to note, however, that such surplus ownership is entirely voluntary and involves only a year-long commitment (in stark contrast to Signatories' usage-related INTELSAT investment obligations).<sup>8</sup> As a result, the investment costs of surplus ownership are below that of Signatories' individual investment obligations.<sup>9</sup> Given these factors, voluntarily holding “excess” investment shares will not deter any foreign Signatory from supporting IUCs that are below the cost of obligatory INTELSAT investments.

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market to offset the direct-access-related losses in its home market.

<sup>8</sup> Surplus ownership can be returned to the entity holding the ultimate investment obligation in the event that its benefits fall below its costs.

<sup>9</sup> See *An Economic Assessment of the Risks and Benefits of Direct Access to INTELSAT in the United States*, Professors Jerry R. Green and Hendrik S. Houthakker, Harvard University, and Johannes P. Pfeifenberger, The Brattle Group, attached to *Comments of COMSAT Corporation*, IB Docket No. 98-192, File No. 60-SAT-ISP-97 (December 22, 1998).

**C. BTNA's Contention that Foreign Signatories Lack the Voting Power to Implement Artificially Low IUCs Is Fundamentally Flawed**

BTNA attempts to prop up its attack on the Commission's foreign Signatory policy by arguing that even if some foreign Signatories are interested in setting IUCs at artificially low levels, they could not muster enough votes to actually do so. BTNA Petition at 10-14. BTNA asserts that this is so because the voting strength within INTELSAT lies in the hands of countries with either Level 3 or Level 4 direct access—now including the United States—and that Signatories representing these nations would not wish to lower IUCs to artificially low levels.

This argument is without merit. At most, the foreign Signatories that could potentially be adversely affected are limited to those who confront *only* Level 3 direct access in their home markets—because, as explained above, only these Signatories could be hurt as INTELSAT investors by being required to effectively subsidize, via artificially low IUCs, their domestic competitors who take advantage of direct access. The same harm would not confront foreign Signatories operating under a Level 4 direct access regime because their domestic competitors would also bear the INTELSAT investment obligation.

In fact, however, few if any foreign Signatories in “Level 3” countries have the same interest as COMSAT in opposing artificially low IUCs. This is because:

- most foreign Signatories experience merely a *de minimis* level of competition from Level 3 direct access rivals in their home markets, which means that the actual negative impact of artificially low IUCs would be negligible;
- most foreign Signatories are dominant, vertically integrated service providers in their home markets, which means that they have power

to offset any reductions in their INTELSAT return by increasing prices for their various domestic services to end-user customers;

- foreign Signatories may be able to achieve selective reductions in IUCs for certain services, which means that they could enjoy effectively subsidized U.S. market entry or expansion that would not be particularly beneficial to the generally very limited number of domestic competitors who might be able to take advantage of Level 3 direct access; and
- even if they were to experience some risk of harm from artificially low IUCs in their domestic markets, most foreign Signatories would still be motivated to support lower IUC levels because of the potentially enormous benefits they could gain through entry or expansion of their presence in the vast U.S. international telecommunications marketplace at a cost subsidized by COMSAT.

Given this combination of factors, BTNA's improbable assertion that any Signatory effort to artificially lower the IUC levels would fail should be seen for the fiction that it is.

## **II. PETITIONER MCI WORLDCOM'S COMPLAINT CONCERNING COMSAT'S CAPITALIZED INSURANCE COSTS IS BASED ON A FLAWED CALCULATION**

MCI Worldcom, in a two-paragraph Petition for Reconsideration, challenges "the Commission's depreciation calculation with respect to the portion of the direct access surcharge relating to COMSAT's capitalized insurance expense"—specifically, an allegedly too-generous depreciation for launch insurance. MCI Worldcom Petition at 1-2. The petition does not address how the FCC calculated the remaining lives of the insurance assets or why the agency's calculations would lead to an incorrect result. Nor does the petition explain MCI Worldcom's own calculations.

One clearly discernible difference between the two is that MCI Worldcom calculates undepreciated insurance as of a date that is later—by a year or more—than

that used by the Commission. Consequently, MCI Worldcom's calculations could be expected to result in a lower amount of undepreciated insurance. However, choosing such a later date and thereby arriving at a lower figure for the remaining undepreciated insurance does not mean that the FCC's result is erroneous.

To the contrary, the error arises in the next step of MCI Worldcom's own calculation: to arrive at the annual depreciation charge, the petition divides the lower depreciation figure by the same number of years of remaining life that the agency employed (namely, four years). This is clearly incorrect. Using the later date to arrive at the initial depreciation figure implies fewer remaining years of life. MCI Worldcom should have divided the undepreciated insurance amount by a smaller number of remaining years. Dividing by a smaller number of years will raise the annual depreciation charge.

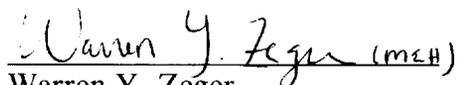
MCI Worldcom's petition provides insufficient information to permit reconciliation of its results with those of the Commission. It is the petitioner's affirmative burden to show that the FCC has erred—and MCI Worldcom fails to meet that burden by “stat[ing] with particularity” why the FCC's calculation “should be changed.” 47 C.F.R. § 1.429(c).

In sum, the quibble raised by MCI Worldcom appears to be neither substantial nor seriously advanced. The Commission should dismiss the petition accordingly.

**CONCLUSION**

For the above reasons, COMSAT respectfully requests that the Commission deny the Petitions for Reconsideration filed by BTNA and MCI Worldcom in this proceeding.

Respectfully submitted,

  
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January 11, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of January, 2000, I caused copies of the foregoing Opposition of COMSAT Corporation to Petitions for Reconsideration to be mailed via first-class postage prepaid mail to the following:

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