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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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| In the Matter of | ) | |
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| Lockheed Martin Corporation, | ) | |
| COMSAT Corporation, and | ) | |
| COMSAT Digital Teleport, Inc., | ) | IB Docket No. 02-87. |
| | ) | |
| and | ) | |
| | ) | |
| Intelsat, Ltd., Intelsat (Bermuda), Ltd., | ) | |
| Intelsat LLC, and Intelsat USA License | ) | |
| Corp., | ) | |
| | ) | |
| Applications for Assignment of | ) | |
| Earth Station Licenses and | ) | |
| Section 214 Authorizations | ) | |

**AT&T PETITION TO DENY.**

AT&T Corp. ("AT&T") submits the following Petition to Deny the Application by Lockheed Martin Corporation ("Lockheed Martin"), Comsat Corporation, and Comsat Digital Teleport, Inc. (collectively "Comsat"), together with Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp. ("Intelsat USA") (collectively "Intelsat") seeking approval for the assignment of Comsat Title III radio licenses to Intelsat LLC and Title II common carrier authorizations to Intelsat USA.[1] To prevent circumvention of U.S. providers' and users' equal access to the Intelsat satellite system under the ORBIT Act, and the resulting harm to U.S. competition, the Commission should approve the license assignments requested in connection with Intelsat's proposed acquisition of Comsat World Systems ("CWS") only if the

[1] *Lockheed Martin/Comsat and Intelsat Seek FCC Consent to Assign Licenses and Section 214 Authorizations*, Public Notice, rel. Apr. 24, 2002, DA 02-951.

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Commission requires Intelsat space segment capacity to be available to U.S. carriers and other U.S. users at the same rates, terms and conditions as to the former CWS. To ensure compliance with this equal access obligation, the Commission also should require: (1) the former CWS to operate separately from the Intelsat entity providing space segment capacity; and (2) the Intelsat entity providing space segment capacity to provide services on a common carrier basis.

## I. THE ORBIT ACT REQUIRES EQUAL ACCESS TO INTELSAT.

The ORBIT Act requires telecommunications users or providers to "be permitted to obtain direct access to INTELSAT telecommunications services and space segment capacity through purchases of such capacity or services from INTELSAT," and that "*[s]uch direct access shall be at the level commonly referred to by INTELSAT . . . as 'Level III'*."[2] As the Commission recently emphasized, "the ORBIT Act effectively mandates direct access as a matter of law and policy in the United States, and directs the Commission to "take such steps as necessary to prevent the circumvention of this section."[3]

Level III access to Intelsat means access that is equal to that given to Comsat, the former U.S. Signatory of Intelsat, and therefore equal to Comsat's wholly-owned distribution affiliate, CWS. The Commission's September 1999 *Direct Access to the INTELSAT System* Order states: "Level III direct access permits customers to enter into a contractual agreement with Intelsat for ordering, receiving, and paying for Intelsat space segment capacity *at the same rates that Intelsat charges its Signatories*."[4] The Commission similarly underscores in a more

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[2] *Open-Market Reorganization for the Betterment of International Telecommunication* ("ORBIT") Act, 47 U.S.C. Section 765(a) (emphasis added).

[3] *Availability of Intelsat Space Segment Capacity to Users and Service Providers Seeking to Access Intelsat Directly*, 15 FCC Rcd. 19,160, ¶ 48 (2000) (Report and Order).

[4] *Direct Access to the INTELSAT System*, IB Docket No. 98-192, Report and Order, (rel. Sept. 16, 1999), FCC 99-236, ¶ 8 (emphasis added).

recent order that "the intent of the ORBIT Act" is "to allow for *equal access* to INTELSAT for non-Signatory customers."[5] Therefore, under Intelsat's privatization, the Commission "expect[s] U.S. service providers seeking access to INTELSAT capacity to have *the same distribution rights and opportunities* as former INTELSAT Signatories."[6]

## II. LEVEL III DIRECT ACCESS PROVIDES IMPORTANT PUBLIC INTEREST BENEFITS ON BOTH THIN AND THICK ROUTES.

Even prior to the enactment of the ORBIT Act, the Commission authorized Level III direct access because it found that such access would increase competition, reduce consumer prices and improve services.[7] The Commission found that U.S. customers had no need to use Comsat as an intermediary to obtain satellite space segment from Intelsat, and that direct access would be more efficient, offered greater flexibility and control and "significant cost savings," and would increase competition by placing competitive pressures on both Comsat and other satellite operators.[8]

The Commission found that direct access would "promot[e] competition and expand[] user choice" for U.S. services to the "thin route" markets where Comsat is dominant, which was "especially significant given that thin route markets represent some of the growth markets for telecommunications services."[9] Direct access would "(1) reduce Comsat's

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[5] *Applications of Intelsat LLC*, 16 FCC Rcd. 12,280, ¶ 69 (2001) (Memorandum Opinion Order and Authorization) (emphasis added).

[6] *Availability of Intelsat Space Segment Capacity to Users and Service Providers Seeking to Access Intelsat Directly*, 15 FCC Rcd. 19,160 at ¶ 31 (emphasis added).

[7] *Direct Access to the INTELSAT System*, IB Docket No. 98-192, ¶¶ 45, 46.

[8] *Id.* at ¶¶ 24, 29-30, 37, 42, 47. AT&T and WorldCom had informed the Commission that Comsat's average margin over the Intelsat utilization charges paid by Signatories for use of space segment capacity was 68 percent and estimated that direct access would reduce this margin by almost half. *Id.* at ¶ 35.

[9] *Id.* at ¶ 43.

bottleneck over access to U.S. INTELSAT capacity that is the only source of international transmission capacity serving those markets; (2) give U.S. carriers the option of using another supplier; and (3) reduce Comsat's market power in those markets."[10]

The Commission found that direct access would also provide important public interest benefits in "thick route" markets. The Commission stated: "We recognize . . . that direct access to competitive or thick route markets is especially significant where fiber optic cable: (1) does not provide a viable alternative to INTELSAT; transmission involves complex or inefficient routing; (3) it does not reach the entire country; and (4) there is insufficient cable capacity to meet demand, or only one cable is available and satellite capacity is required to minimize the effects of network outages."[11] Level III direct access to all markets would also permit "more flexibility in assuring efficient utilization of satellite and cable facilities."[12]

AT&T continues to rely on Intelsat satellites for its services to sixty-seven countries that it does not serve by undersea cables. AT&T also continues to require satellite access to many thick route countries because of the requirements of correspondent foreign carriers or customers, because undersea cables do not provide adequate or cost-effective access to all regions of the country, or to provide redundant capacity for undersea cable outages. Direct access to Intelsat, therefore, continues to provide important public interest benefits in both thick

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[10] *Id.*

[11] *Id.* at ¶ 44.

[12] *Id.*

and thin route markets.[13]

## III. THE PROPOSED TRANSACTION WOULD CIRCUMVENT EQUAL ACCESS BY PROVIDING FAVORED TREATMENT OF A FORMER INTELSAT SIGNATORY.

The Commission has thus far found Intelsat's distribution and wholesale customer agreements to be consistent with the equal access requirement of the ORBIT Act *only* because it has found no indication that former Signatories like Comsat would receive favored treatment in dealing with Intelsat. The Commission has examined whether "Signatories would be able to obtain any protections or privileges that direct access users would not be able to also obtain," and has found "no indication that Intelsat LLC will be inappropriately incented to favor its Signatories over other users."[14]

No such finding would be warranted following consummation of the transaction proposed here. Once Intelsat acquires ownership of CWS, Intelsat would have an incentive to favor this former Signatory over other U.S. users, because Intelsat's overriding commercial interest would be to enhance the profitability of CWS. Other former Intelsat Signatories, which retain ownership of Intelsat pending any dilution that may result from the IPO, and which are

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[13] The availability of direct access also provides important leverage in negotiations with Comsat and other satellite operators, even where U.S. carriers do not utilize direct access to Intelsat. There is therefore no basis to Applicants' claim (p. 28, n.53) that U.S. Intelsat capacity usage "does not appear to be significant" merely because direct customer usage may account for no more than 18 percent of U.S. usage. Indeed, this fact suggests that direct access may still be impeded by the "disproportionate" Comsat control of Intelsat capacity, as previously found by the Commission, which provides no support for the effective re-establishment of Comsat control over all Intelsat capacity as proposed here. See *Availability of Intelsat Space Segment Capacity to Users and Service Providers Seeking to Access Intelsat Directly*, 15 FCC Rcd. 19,160 at ¶ 48. *See also, id.* at ¶ 34 (finding that "U.S. users and providers of telecommunications services currently do not have sufficient opportunity to access INTELSAT capacity directly to meet their service or capacity requirements").

[14] *Applications of Intelsat LLC*, 16 FCC Rcd. 12,280, ¶ 70.

largely dominant foreign carriers, would have similar incentives.[15]

By aligning the interests of Intelsat with those of its former exclusive U.S. distributor, the effect of Intelsat's acquisition of CWS would be to re-establish the former Comsat control over U.S. access to Intelsat space segment capacity and to remove transparency from that relationship, this preventing oversight. Consequently, Intelsat would have both the incentive and the ability to provide access to its satellite space segment to the former CWS on more favorable terms and conditions than those available to other U.S. distributors and users -- thus circumventing the equal access requirement of the ORBIT Act.

Because of the different incentives that would govern Intelsat's conduct in the U.S. market once CWS became part of Intelsat, the Commission could no longer continue its past reliance on the "non-exclusive" nature of Intelsat's distribution and wholesale customer agreements to ensure the equal access required under the ORBIT Act.[16] The mere ability to engage in commercial negotiations with Intelsat would provide no assurance that U.S. providers and users would receive equal access with a former Signatory once Intelsat's negotiations with that former Signatory were no longer at arm's length.

This significant change in the relationship between Intelsat and its former Signatory instead requires the Commission to take additional action to prevent the circumvention of the equal access requirement that would likely occur if Intelsat is able to provide the former CWS with space segment on terms and conditions that are not otherwise available. Specifically, the Commission should condition any approval granted here on requirements that the former

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[15] The owners of Intelsat include almost eighty dominant foreign carriers or entities that control dominant foreign carriers. *Compare* Application, Attachment 2 *with FCC List of Foreign Telecommunications Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets*, http://www.fcc.gov/Bureaus/International/Public_Notices/1999/da990809.txt.

[16] *Applications of Intelsat LLC*, 16 FCC Rcd. 12,280, ¶ 70.

CWS operates separately from the Intelsat entity providing space segment capacity (*i.e.*, Intelsat LLC), and that Intelsat space segment is made available to other U.S. carriers and U.S. users at the same rates and other terms and conditions as to the former CWS.

The former CWS should be required to provide service in the U.S. through a separate corporation from the Intelsat entity providing space segment capacity, maintain separate books of account, and not jointly own switching or transmission facilities with that entity. These requirements would provide the minimal level of separation necessary to ensure the equal access to Intelsat satellite system required by the ORBIT Act, and would be similar to the separation the Commission requires for foreign-affiliated U.S international carriers that are regulated as dominant.[17]

To ensure the nondiscriminatory provision of services to the former CWS and to other U.S. users, the Commission should require Intelsat LLC to provide space segment on a common carrier basis. Continuation of the present private carriage treatment of Intelsat LLC would impede the nondiscrimination safeguard required to ensure equal access by requiring Intelsat to continue to offer services under individually established terms.[18] The Commission

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[17] *See* 47 CFR Section 63.10(c)(2)(i)-(ii); *Rules and Policies on Foreign Participation in the U.S. Market*, 12 FCC Rcd. 23,891, 24,006 (1997).

[18] *See also*, Application, Request for Modification of Common Carrier Status, FCC Form 312, Exhibit II (Intelsat will "continue providing [private carriage] services after the CWS acquisition closes"). Because of the significant change in circumstances that would result from the proposed acquisition, the safeguards necessary to provide equal access as required by the ORBIT Act would provide "sufficient public policy reasons to place Intelsat under a legal compulsion to serve the public indifferently." *Applications of Intelsat LLC*, 16 FCC Rcd. 12,280, ¶ 6. Therefore, unlike the situation in 2001, when the Commission found "no public policy reason *at this time*" to require common carriage by Intelsat, the NARUC test now requires a different result. *Id.*, ¶ 67 (emphasis added).

should also require public disclosure of the specific rates, terms and conditions charged or applied to the former CWS for Intelsat space segment, by requiring those rates, terms and conditions to be made available on the Internet or in at least one public location.[19]

The Commission has previously stated concerning its ORBIT Act authority to prevent circumvention of direct access that it is "prepared to step in if it appears Comsat is using its control of INTELSAT capacity to extend its past monopoly over access to INTELSAT and deny users and service providers the benefits of direct access in the future."[20] Commission action to ensure that users and service providers receive the continued benefits of direct access is equally necessary if Intelsat becomes the vertically-integrated provider of both the U.S. distribution activities of Comsat and upstream satellite space segment facilities, which would effectively extend Comsat's control over all Intelsat capacity.

Lastly, Applicants properly concede (p. 31) that Intelsat USA would be subject to dominant carrier regulation in thin route markets following the proposed acquisition. Since Intelsat would control Comsat's bottleneck over U.S. international transmission capacity serving these routes, it should be subject to the same regulation on those routes that now applies to

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[19] *See Policy and Rules Concerning the International Interexchange Marketplace*, 16 FCC Rcd. 10,647, ¶ 43 (2001).

[20] *Availability of Intelsat Space Segment Capacity to Users and Service Providers Seeking to Access Intelsat Directly*, 15 FCC Rcd. 10,606, ¶ 27 (2000) (Notice of Proposed Rulemaking); *see also, id.*, 15 FCC Rcd. 19,160 at ¶ 47 (Report and Order) ("We . . . retain the option to adopt a regulatory solution if commercial solutions are unsuccessful.")

Comsat.[21] Indeed, as the vertically-integrated provider of both the U.S. distribution activities of Comsat and upstream satellite space segment facilities, Intelsat would possess even greater market power on thin routes than Comsat possesses today.

## CONCLUSION

For the above-described reasons, the Commission should not approve the license assignments requested in connection with the proposed transaction unless it requires compliance with conditions ensuring the continued availability of the equal access required by the ORBIT Act.

Respectfully submitted,

AT&T CORP.

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Dated: May 24, 2002

[21] The reclassification of thin routes should continue to be governed by the procedures established in *Policies and Rules for Alternative Incentive Based Regulation of Comsat*, 14 FCC Rcd. 3065 (1999), requiring the submission of "evidence that the market is served by a United States carrier through submarine cable facilities." *Id.* at ¶ 39. The mere fact that some thin route countries have "joined the WTO" (Application, p. 31) fails to show the existence of any such competition. In addition to dominant carrier regulation, Intelsat should be subject to the other existing regulatory safeguards governing Comsat, particularly the cost allocation and accounting requirements preventing the misallocation of costs to non-competitive markets and the requirement for the filing of unbundled tariffs for space segment and earth station services. *See Comsat Corp.*, 13 FCC Rcd. 14,083, ¶¶ 172-73 (1998).

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## CERTIFICATE OF SERVICE

I, Theresa Donatiello Neidich do hereby certify that on this 24th day of May 2002, a copy of the foregoing "AT&T Petition to Deny" was mailed by U.S. first class mail, postage prepaid, upon the parties on the attached service list:

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