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before the

Subcommittee on Communications
Senate Committee on Commerce, Science and Transportation

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Mr. Chairman, and members of the Subcommittee: On behalf of COMSAT Corporation ("COMSAT"), it is a privilege to appear today and present COMSAT's views on S. 376, the "Open-market Reorganization for the Betterment of International Telecommunications Act" ("ORBIT"), which amends the Communications Satellite Act of 1962 (the "Satellite Act"). I last testified before this Subcommittee seven months ago and urged that Congress revise the Satellite Act promptly. Since then, the need for legislation has become even greater for three principal reasons.

First, the full privatization of the business operations of Inmarsat is set for next month. However, a change in the law is required for the U.S. government to continue its participation in overseeing the provision of vital Global Maritime Distress and Safety Services ("GMDSS") by Inmarsat.

Second, the INTELSAT Assembly of Parties is scheduled to meet in October 1999, to consider various privatization proposals. Enactment of legislation *before then* will provide U.S. negotiators with clear guidelines and objectives for a pro-competitive outcome; and entering into that international meeting with a unified position will enhance U.S. prospects considerably.

Third, the approval process at both the Justice Department and the FCC for Lockheed Martin Corporation's ("Lockheed Martin") proposed acquisition of COMSAT is underway and could be finished in a few months. However, the obsolete provisions in the Satellite Act that limit ownership of COMSAT stock must be

removed to complete the transaction.

Senator Burns, with the early introduction of S. 376, you and the co-sponsors of the bill are to be commended for taking the steps necessary to address all these matters. S. 376 will ensure that, after Inmarsat is privatized, the U.S. government has the authority to continue its role in the provision of GMDSS services. It also will allow the United States to be a positive and constructive participant in the privatization of INTELSAT. In addition, it will promote competition among U.S. satellite companies with long overdue deregulation. All of these measures in combination will bring enormous benefits to American consumers. Satellite legislation is now poised to move quickly this year. Let me explain why.

We do not begin today's hearing with a blank slate. Much was learned about the industry and the forces driving international satellite reform during the 105th Congress. The one thing that did emerge clearly from the last session is that the Congress and the Administration share identical objectives -- to privatize INTELSAT in a pro-competitive manner and to update the laws regulating the U.S. satellite industry to reflect the market conditions of today, rather than the state of affairs that existed decades ago after the launch of Sputnik. The "October Sky" of 1999 bears little resemblance to that of 1962 when Congress passed the Satellite Act. Today, the debate centers on the specific measures necessary to complete the privatization of INTELSAT (a process already well underway), and on whether COMSAT's rivals need to have Congress legislate a particular market outcome once the Satellite Act's restrictions on COMSAT are removed.

COMSAT submits that S. 376 strikes the right overall balance. It creates powerful economic incentives to expedite INTELSAT privatization, while minimizing unilateral dictation of specific terms and conditions to other nations. At the same time, the bill ensures that the interests of U.S. consumers are served by the restructuring plan ultimately adopted by INTELSAT. U.S. market access is predicated on a Presidential

certification that the final privatized structure of INTELSAT will not distort competition, as defined by factors clearly set forth in the statute. In the event of undue delay, the bill provides for U.S. withdrawal from INTELSAT if a final decision by its member nations is not attained by January 1, 2002.

On the domestic side, S. 376 removes all the antiquated provisions of the Satellite Act and makes large strides toward regulatory parity for all competitors. The bill removes the ownership restrictions of the 1962 Satellite Act that have prevented COMSAT from merging with, or being acquired by, others. This will permit the Lockheed Martin merger to go forward, subject to Justice Department and FCC approvals. While COMSAT does have concerns with certain provisions of the bill, which I will elaborate upon, it is a sound bill. It is a pro-competitive, market-oriented and deregulatory privatization measure. It promotes user choice and consumer interests, protects the needs of the national security community and advances U.S. trade interests.

For these reasons, S. 376 represents a major milestone in this debate. Based on the Subcommittee record and recent administrative and judicial decisions, the bill accurately reflects the current state of competition in the international satellite industry, appropriately relies on market forces and imposes government regulation only where absolutely necessary. The bill recognizes, as the FCC did last year, that COMSAT's position in the international telecommunications marketplace is no longer dominant, and that COMSAT has no monopoly power in any major service or geographic market it addresses. The FCC has recently held, after extensive analysis, that these major markets, comprising 93 percent of COMSAT's business over INTELSAT, are subject to "substantial competition."

Only on the so-called "thin routes" -- that is, countries where COMSAT carries out its universal service obligations -- is the company regulated as a dominant carrier. These thin routes in the aggregate account for only 7 percent of COMSAT's traffic,

and about $19 million in revenue of the nearly *$19 billion market* for U.S. international telecommunications services (.001 percent!). It also is important to note that COMSAT's rates for these thin routes are the same as, or lower than, the rates for the markets where we face the most vigorous competition. So it can be said without equivocation that COMSAT delivers the benefits of competition everywhere. *See* Attachment 1.

Some competitors attempt to mask this reality by pointing to a large number of thin route countries for some marginal COMSAT services. For example, one competitor frequently cites as evidence of COMSAT's enormous monopoly that we are the exclusive provider of occasional use-TV satellite capacity to 142 thin route countries. We have actually never even received service requests from our customers to more than one-third of these countries for many years. Moreover, the Subcommittee should be aware that this enormous COMSAT "monopoly" generated all of $500,000 in revenue in 1998.

COMSAT secures capacity on these thin routes in furtherance of its universal service commitments, not because of the negligible revenue generated. For competitors to urge the Congress to bar COMSAT from competitive growth markets because we alone serve thin routes makes little sense -- except to competitors who search for any conceivable way to keep COMSAT hamstrung. The sponsors of S. 376 should be commended for rejecting this market-distorting rhetoric and crafting legislation based on actual competitive conditions.

COMSAT's monopoly over satellite communications to and from the United States ended in 1984, when separate satellite systems were authorized to compete with COMSAT and INTELSAT. The international telecommunications landscape has changed dramatically since then, and COMSAT is now just one firm among many in a marketplace characterized by vibrant, *facilities-based* competition. We face strong challenges daily from other satellite companies such as Hughes/PanAmSat, Loral, GE

Americom, Columbia and Teleglobe Canada. In addition, customers requiring international transmission capacity are by no means tied to satellite technology. Over the last decade, high-capacity, undersea fiber optic cables have actually become the dominant medium for the provision of international voice and data services. These cables directly connect the U.S. to over 125 countries, including every market of significance, with more fiber cables being added on a routine basis. For these services, COMSAT competes daily against multi-billion dollar carriers such as AT&T, MCI WorldCom and Sprint. *See* Attachment 2.

Last year, AT&T generated over $8 billion in international service revenue, and is now about to partner with British Telecom in a $10 billion global telecommunications venture. MCI Worldcom had international service revenue of over $4 billion, and Sprint has a multi-billion dollar international enterprise as well. To put all this in perspective, COMSAT's entire INTELSAT service revenue in 1998 was only $266 *million*. Pleas of these competitors to have Congress legislatively nullify our non-exclusive, carrier contracts because COMSAT wields "monopoly power" over them are ludicrous. These companies have enormous bargaining power, and do not need the help of Congress to renegotiate their contracts with COMSAT, a pattern they have followed for years.

As described below, COMSAT's market shares have declined dramatically in the last decade to levels as low as an average of 12 percent for voice and data services to countries with the heaviest traffic volumes ("thick routes"), and an average of no more than 35 percent in multi-carrier international video markets. During the same time, many of COMSAT's satellite competitors have enjoyed enormous success. Later this year, the PanAmSat satellite fleet will surpass INTELSAT in size by a significant margin, with 24 satellites in-orbit compared to 19 for INTELSAT.

PanAmSat also touts to Wall Street a "non-cancelable" backlog of service contracts of $6.3 billion, compared to only a $700 *million* contract backlog for COMSAT. Loral, with its acquisitions of the satellite fleets of AT&T Skynet, Orion

and Satmex, is another formidable competitor. In short, there can be no dispute that the competitive marketplace is working. Nor can claims be taken seriously that COMSAT has special privileges and advantages that have allowed it to maintain a monopoly position. If we did, our competitors would not be multiplying and flourishing at the rate that they are.

The truth of the matter is that, absent rapid privatization of INTELSAT and modernization of the Satellite Act, competition will diminish. INTELSAT's structure must be privatized if it is to respond to customer demands with the simplicity and speed of its competitors. COMSAT's investment in INTELSAT is at risk without these fundamental changes. COMSAT itself is without the wherewithal in the long run to stand alone against the vertically-integrated GM/Hughes/PanAmSat, Loral/Orion/Satmex, and foreign global and regional satellite systems, not to mention the giant cable consortia led by AT&T and MCI Worldcom.

That is the reality of today's international telecom markets. COMSAT's announced plans to merge with Lockheed Martin are, in large part, an effort to meet these competitive challenges. This union will combine COMSAT's established satellite and networking business with Lockheed Martin's space industry expertise, technology, resources and capital to create a more effective competitor in the global telecommunications services market. In the end, all the hue and cry over the need to restrict COMSAT services, abrogate COMSAT's contracts, and minimize its retail business through direct access, is nothing more than an effort to avoid that prospect. In contrast, S. 376 will enable American consumers to be the true beneficiaries of robust and fair competition.

Before turning to the specific provisions of S. 376, I would like to provide the Subcommittee with some additional relevant background on COMSAT, and more detailed information on the industry participants actively involved in this legislative debate. This material is essential to address some misinformation about COMSAT and various criticisms being raised about certain provisions in S. 376, criticisms which

simply do not withstand analysis.

COMSAT and the Communications Satellite Act of 1962

In 1962, pursuant to the Satellite Act, COMSAT was created as a *private* American corporation with NO government ownership, subsidies, or guarantees. COMSAT is owned by approximately 33,000 shareholders who hold 53 million shares of stock traded on the New York Stock Exchange. While its name is well known as the pioneer of commercial satellite communications, it is actually a small company, with just over $600 million in total revenue in 1998.

COMSAT was established to carry out the national policy of creating and operating a global satellite communications system in partnership with other nations. That satellite system is known as INTELSAT. The Congress decided that the United States would participate in this global system via COMSAT through private capital invested by ordinary Americans. In fact, the Satellite Act directed that the stock initially offered by COMSAT "be sold at a price not in excess of $100 for each share and in a manner to encourage the widest distribution to the American public."

Working to fulfill the mandate of the Satellite Act, COMSAT has been successful on a historic scale. COMSAT and INTELSAT today provide universal coverage connectivity on a non-discriminatory basis to developed and developing countries throughout the world. COMSAT and INTELSAT are important components of America's telecommunications infrastructure and one of the main reasons why the United States exerts technological leadership -- dispersed among many companies -- in the field of satellite communications.

The satellite facilities COMSAT invested in are vital to both the civilian and military functions of the U.S. Government. They enable American businesses to serve global markets and manage global enterprises. COMSAT is also dedicated to the universal service mission of the Satellite Act, and the company carries traffic to foreign

points that do not generate sufficient volume for international carriers to construct their own cable facilities, and/or which other satellite firms opt not to serve at all. Moreover, and unlike any other U.S. satellite company, COMSAT offers non-discriminatory access at competitive rates to its facilities to all comers, including its competitors.

The work being done at COMSAT Laboratories further contributes to keeping the U.S. at the forefront of space communications technology, including applications to meet national defense requirements. COMSAT holds hundreds of patents which are the result of the company's investments in research and development. Those innovations have made satellites an integral part of today's global information infrastructure. To cite the latest example, COMSAT Labs just developed a remarkable new technology, known as Linkway 2000™, which allows U.S. carriers and Internet Service Providers to transmit digital data streams with the same speed, quality, and reliability as fiber optic cables, using a variety of network platforms incorporated in one device. The full potential of the Internet can now be made available to many developing nations and remote locations lacking adequate terrestrial infrastructure -- all via COMSAT satellite technology.

State of Competition

When COMSAT launched its first satellite in 1965, it was the sole provider of international satellite communications services. As a monopoly, the company was subject to FCC reviews of its investments and had a regulated rate base on which its earnings were strictly limited. However, the days of monopoly are long gone!

In November 1984, President Reagan signed a Presidential Determination that opened the market for international satellite communications to alternative satellite systems. Since then, a healthy U.S. satellite industry has developed, with strong facilities-based rivals like Hughes/PanAmSat, Loral, Columbia, GE Americom and foreign systems -- all competing with COMSAT in the U.S. for the provision of

international satellite capacity. Space Business News reported this February that "more satellites have already been launched in the 1990's than in the preceding three decades combined."

The transition of the U.S. international satellite industry from its single system origins to today's highly competitive environment is a remarkable success story. An article in the August 1998 edition of Via Satellite captures the current state of competition quite well:

> The United States is home to many of the world's leading private global satellite operators. The Hughes/PanAmSat merger has created by far the largest of such companies. GE Americom and Loral Skynet are expanding beyond their traditional U.S. market into Europe, Latin America and the Asia Pacific. These companies are building fleets that rival INTELSAT's in size, at the same time that INTELSAT is losing market share and spinning off five of its spacecraft in a new private venture.

The facts underlying this assessment are even more revealing. For instance, from a single satellite launched in 1988, the Hughes/PanAmSat system is currently in the midst of a $2 billion expansion program to increase its fleet to 24 satellites by the end of 1999, with the company scheduled to launch a satellite *every two months* between now and then. PanAmSat has a backlog of $6.3 billion in firm contract orders and had $737 million in revenue in 1998. Today, PanAmSat alone has a market capitalization several times larger than that of COMSAT.

In contrast, INTELSAT divested part of its fleet in 1998, thus reducing its size from 24 to 19 satellites. Because COMSAT, in turn, must share capacity on INTELSAT satellites with many other Signatory owners, and because much of the INTELSAT system is devoted to non-U.S. service (*e.g.*, Asia - Europe), the total capacity now available to COMSAT to serve the U.S.-international market in competition with PanAmSat, Loral and others amounts to the equivalent of just 3 - 4 satellites. Moreover, COMSAT's backlog of firm contract orders is nine times less

than that of PanAmSat, and COMSAT's 1998 revenue from the INTELSAT business was only $266 million.

As noted, Loral is another major U.S. company competing to offer international satellite services. As a result of its $1.5 billion acquisition of AT&T's Skynet satellites, the Orion system, and a majority share of the Mexican Satmex satellites, Loral has 10 geostationary satellites in orbit, and is planning to expand its fleet to 15 - 17 satellites by 2001. GE Americom, Teleglobe, and Columbia Communications are also vying to carry voice, video, and data traffic via satellite between the U.S. and overseas destinations. In fact, Teleglobe recently announced a new partnership with EUTELSAT (a European satellite firm with 14 satellites in-orbit) to provide additional transatlantic satellite services to and from the United States.

Given the state of the marketplace and the billions of dollars being invested in competing systems (and considering COMSAT's declining market shares), no credence can be given to the claims being made that COMSAT has unfair advantages which are harmful to competition, or that separate satellite systems suffer from foreign market access problems. According to the FCC, "PanAmSat provided full-time video service to 139 countries" -- only four countries shy of the entire INTELSAT membership. The harsh reality is that, as a member of an intergovernmental treaty organization structured for a much earlier era, COMSAT has limited ability to participate in the growth of this industry. Indeed, in April 1998, when the FCC granted COMSAT non-dominant status in 93 percent of its markets, the agency observed that "over the last three years, PanAmSat's and Hughes' satellites have captured 70 percent of the growth in international video traffic to and from the U.S."

Competition to INTELSAT and COMSAT is about to intensify even more with a new generation of satellites that will utilize the super-high frequency Ka-band. The FCC has authorized thirteen Ka-band systems, comprising some 73 satellites, which will offer a variety of data and multimedia applications. These systems are not

speculative. On March 17, 1999, The Wall Street Journal reported that the Board of Directors of General Motors Corporation -- the parent of Hughes/PanAmSat -- approved the infusion of $1.4 billion to begin building the Hughes Ka-band Spaceway Satellite System, also noting that this "funding decision essentially commits the satellite maker and service provider to spend a total of $4 billion on the largest first phase of the project." Other firms planning to provide similar broadband satellite services include Loral, GE Americom, Lockheed Martin and Teledesic (backed by Motorola and Boeing). According to the FCC, these new satellites should help increase worldwide revenues from commercial fixed and mobile satellites from the 1996 level of $9.4 billion to $37.7 billion in the year 2002. Again, COMSAT's revenue from its INTELSAT operations in 1998 was just $266 million.

Satellite capacity, however, is only part of the market for international telecommunications services available to consumers today. Since 1988, undersea fiber optic cables have far and away replaced satellites as the dominant medium for international telephone and data transmission. This dramatic increase in competition from undersea cables resulted from the elimination in 1989 of regulatory protections designed to promote international satellite communications, and from extraordinary developments in fiber optic technology. The capacity and quality of fiber optics is exponentially greater than the old copper analog cables. The first trans-Atlantic cable, TAT-1, was laid in 1956 and had the capacity to provide only 44 voice-grade circuits. TAT-12/13, which entered service in 1996, has the all-digital capacity to transmit 120,000 voice conversations (or an equivalent amount of data). That is 2 1/2 times the capacity of the largest INTELSAT satellite, and is already considered old technology.

Due to rapid deployment of undersea fiber cables, there is more than enough unused international transmission capacity now available to absorb *all* of COMSAT's current traffic. Today, the United States has direct fiber connections to over 125 countries, and these cable systems continue to proliferate and with even greater capacity. For example, CTR Holdings L.P., is in the midst of a fiber-cable project

(known as Project Oxygen) that will have 265 landing points in 175 countries and cost $14 billion. On March 15, 1998, the FCC licensed this private cable company to build the first phase "linking together a total of 78 countries and locations on all continents except Antarctica." Cable installation is scheduled to begin later this year.

Another cable firm, Global Crossing, Ltd., has raised $3 billion and is currently laying fiber links from North America to Japan, Central America and the Caribbean. The initial installed capacity on Global Crossing's first transatlantic cable Atlantic Crossing (AC-1) can handle more than 480,000 simultaneous two-way conversations. Service commenced in May 1998. By the end of 1998, Global Crossing had already reported contract sales for capacity exceeding $1 billion. And just last week, Global Crossing entered into an agreement to purchase Frontier Corporation -- one of the nation's largest providers of domestic long distance service -- for $11.2 billion. The combined companies will have a market capitalization of about $30 billion and $4 billion in revenue for 1999.

There is no question that competition from separate satellite systems and fiber optic cables has changed the global telecommunications marketplace beyond what could have been imagined by the creators of the 1962 Satellite Act. In every significant market segment that COMSAT serves via INTELSAT, the FCC has found that COMSAT's market share has dropped well below monopoly levels. COMSAT's share of the international switched voice and private line market has fallen from approximately 70 percent in 1987 to less than 20 percent today, and to less than an average of 12 percent in the most heavily trafficked geographic and service markets. COMSAT's share of the international video transmission market has declined from nearly 80 percent in 1993 to approximately 35 percent today. Cables and separate satellite systems carry the majority of traffic in every major geographic market. *See* Attachment 3.

Even in the low volume geographic markets (the "thin routes" comprising

approximately 2 percent of the circuits utilized by U.S. international carriers), U. S. consumers are not confined to COMSAT to reach those countries using the INTELSAT system. Users can also turn to the Canadian participant in INTELSAT, Teleglobe, which the FCC has authorized to operate in the U.S. As a practical matter, this means that COMSAT's $19 million thin route business is also subject to real competition.

Teleglobe is now the world's second largest owner of fiber optic cable capacity as well, and it recently merged with the 5th largest U.S. long distance carrier, Excel Communications. That uncontested merger was valued at $7 billion (compared to $2.7 billion for Lockheed Martin-COMSAT) and will create a global, integrated service provider with access to 240 countries. Teleglobe has opened offices in Chicago, Miami and San Francisco, and announced in January that it "has grown to service more than 100 domestic carriers in the U.S., including several Regional Bell Operating Companies," and that it also provides service to U.S. television broadcasters "including ABC, CBS, CNN and Fox News."

In February 1999, Teleglobe expanded its U.S. satellite operations by entering into a capacity agreement with EUTELSAT. As reported in Satellite International, "EUTELSAT has secured a link to the coveted U.S. market without having to deal with the thorny issue of obtaining a U.S. license. Under the terms of the deal . . . EUTELSAT will be able to offer other customers access to Teleglobe's teleports in New York, Washington, D.C. and Montreal." This alliance creates yet another satellite alternative to COMSAT for U.S. consumers to reach overseas markets.

Deregulation

In April 1998, the FCC ruled that COMSAT is *not* a monopoly, but rather a single competitor in an industry characterized by *substantial*, *facilities-based* competition. Specifically, the Commission reclassified COMSAT as a "non-dominant" carrier and found that:

> Because of the unprecedented growth in the industry . . . COMSAT is no longer the sole commercial provider of international switched voice and video transmission services via satellites. Today, other satellite companies effectively compete against COMSAT and the INTELSAT satellite system . . . . In the future, new voice, data and video services authorized by the Commission will be available to consumers via low Earth orbiting, non-geosynchronous satellite systems. . . . These new services will compete against existing satellite services, thereby providing consumers with more choice for their international telecommunications needs. Moreover, the transoceanic capacity and geographical coverage of fiber-optic cables has burgeoned since 1985, and they now provide a highly competitive transmission alternative for providers of international switched voice and private line services. The emergence of competitors to COMSAT has likewise increased the supply of satellite transmission capacity for the provision of these services.

Based on a detailed economic analysis, the FCC then determined that COMSAT no longer has monopoly power in the product and service markets accounting for over 90 percent of COMSAT's business on the INTELSAT system -- switched voice and private line service to thick route markets, full-time video service in all geographic markets, and occasional-use video service in the multiple carrier market.

Hopefully this will put to rest, once and for all, the seemingly never-ending claims that COMSAT's exclusive access to INTELSAT creates a monopoly. COMSAT's exclusive right to use the space segment capacity it paid for is no different than the exclusive right enjoyed by other satellite providers to sell services on the facilities they paid for. That alone does not make a monopoly. The primary determining factors are whether other suppliers offer consumers substitutable choices and whether consumers are able to exercise those choices. There can be no doubt that when over 80 percent of international voice traffic to and from the U.S. is being placed on non-COMSAT facilities, and over 65 percent of international video traffic is placed on non-COMSAT facilities, COMSAT's exclusive access to INTELSAT is not a monopoly.

With all this facilities-based competition, in February 1999, the FCC further

extended its deregulation of COMSAT. The agency eliminated rate of return regulation on COMSAT's thin route business, replacing it with a far less onerous form of incentive regulation. In connection with that decision, COMSAT pledged to charge consumers of its thin route services the same rates we charge on the most highly competitive routes ("thick routes"), and not to raise its prices in the future. COMSAT also committed to annual 4 percent reductions for voice service on those thin routes through 2002. I am aware of no other carrier making similar commitments to its customers, and this is certainly not the behavior of an alleged monopolist. As the FCC recognized, COMSAT's proposal on thin route pricing was driven by the ever increasing levels of competition in the global telecommunications markets in which it operates.

Progress on INTELSAT Privatization

Despite the claims of its competitors, INTELSAT is not immune from the dynamic nature of market competition. Because COMSAT is the largest investor in INTELSAT, and a private U.S. corporation accountable to its shareholders, we could not stand by and allow COMSAT's investment to diminish in value as competition significantly intensified. As mentioned, the governance and financial structure of an intergovernmental treaty organization are simply not suitable for today's fast-paced environment. Therefore, nothing short of full privatization, in COMSAT's view, will suffice.

It has taken significant ramp-up time to convince 142 other nations to proceed down this path, especially due to concerns about maintenance of universal connectivities to less developed countries by a private, for-profit firm. Nevertheless, major progress toward achieving this goal has already been made. INTELSAT itself divested a quarter of its fleet (five in-orbit satellites and one under construction) in November 1998 and created a new, independent, fully private global satellite company, New Skies Satellites, N.V. INTELSAT's member nations also unanimously

agreed at that time that the New Skies partial privatization would only be the "first step" in reforming INTELSAT. Building on the momentum of New Skies, INTELSAT next elected a new Director General and CEO who ran on a platform of full privatization, and subsequently has set a goal to reach such an agreement by INTELSAT member nations by the end of 2001.

Demands by some competitors that a pro-competitive privatization requires yet another "break-up" of INTELSAT into three or four more "successor entities" lack any rational basis. U.S. legislation calling for the break-up of INTELSAT will not advance the privatization process, but is more likely to generate backlash and delay. But most important, such a drastic measure is not necessary to promote competition.

It bears re-emphasis that, in the aggregate, the INTELSAT capacity devoted to serving the U.S. market amounts to the equivalent of less than four satellites. The dismemberment of INTELSAT, as Hughes/PanAmSat advocates, really should be seen as an effort to fragment INTELSAT into a number of weaker systems that will not be able to compete with Hughes/PanAmSat effectively. As noted above, the Hughes/PanAmSat global satellite fleet will surpass all of INTELSAT in size by the end of this year. Given this success, the vigorous efforts of Hughes/PanAmSat to have the Congress legislate the dismantling of its major competitor into a number of marginal systems is completely self-serving. Other satellite competitors, like Loral and GE Americom, are quickly approaching INTELSAT in size as well. Moreover, foreign entities, like British Telecom, Teleglobe and EUTELSAT, are also serving the U.S. market, not to mention the fiber cable consortia controlled by AT&T, MCI Worldcom, and others.

There are, however, sound means for the Congress to ensure a pro-competitive privatization, and S. 376 establishes just the right framework. INTELSAT will not be given direct access to the U.S. retail market unless the President of the United States determines that it has been privatized in a pro-competitive manner. That should be a

more than adequate safeguard to protect competition in U.S. markets. Furthermore, the service restrictions embodied in S. 376 will provide a powerful impetus for rapid privatization, without impairing U.S. users, the national security or U.S. trade commitments. Accordingly, the Subcommittee is respectfully urged to reject any thinly disguised efforts to require a restructuring that is market-distorting and anti-competitive in effect, as Hughes/PanAmSat advocates.

While INTELSAT has partially privatized and is in the midst of completing the process, another international satellite organization, Inmarsat (which provides satellite services to maritime, aeronautical and land mobile users) has moved rapidly to full privatization. COMSAT is the largest owner of Inmarsat, and for the same reasons as with INTELSAT, we vigorously pursued a full privatization agenda with the other 83 member countries of that treaty organization.

COMSAT is pleased to report that on April 15, 1999, Inmarsat and its fleet of nine mobile service satellites will convert its business operations into a fully private, commercial company. A small intergovernmental organization with a staff of about three people will remain in existence to ensure that the new private firm continues to perform its public service obligations of providing Global Maritime Distress and Safety Services ("GMDSS"), consistent with the international Convention on the Safety of Life at Sea ("SOLAS"), to which the United States is a party. However, due to a recent interpretation by the Justice Department pertaining to future U.S. participation in Inmarsat, legislation is required to conform the 1978 Inmarsat Act (Section 5 of the Satellite Act) to this privatization, and S. 376 contains such conforming language in Section 6.

COMSAT/Lockheed Martin Merger

To meet the challenges and opportunities created by the open, diverse and highly competitive environment that exists today for international telecommunications services, COMSAT wants to merge with Lockheed Martin Corporation. The proposed

merger will bring together the two companies' complementary strengths and capabilities. Combining Lockheed Martin's resources and space expertise with COMSAT's established reputation and operating experience as a satellite services provider will create a new, more vigorous competitor and enable consumers to reap the benefits of the operating efficiencies created by the merger.

Lockheed Martin's purchase of COMSAT will not result in an increase in concentration or a reduction in the number of competitors, because Lockheed Martin currently does not offer satellite communications services to and from the United States in competition with COMSAT. With the explosive growth in the number and capacity of service providers in the international telecommunications market, including both satellite and undersea fiber cable operators, the effect of the merger on competition will be very positive. In particular, the merger will create an international telecommunications company that has the critical mass necessary to compete effectively against other industry giants, like AT&T/BT, MCI Worldcom, Loral, Hughes/PanAmSat, GE Americom and Teleglobe. This will undoubtedly promote U.S. technological leadership, and provide valuable employment opportunities in a high-growth sector of the economy.

The merger also will foster advanced satellite and ground segment technologies and turnkey telecommunications solutions that promise vast benefits to users in the United States and around the world, in both well-served and thin route markets. With privatization, it will complete the transformation of COMSAT into a normalized corporate entity with no special legislative status. It will help expedite the full privatization of INTELSAT by bringing Lockheed Martin's resources to bear in support of the objectives of S. 376.

At present, the Satellite Act prevents any company from acquiring a majority of COMSAT's stock. Thus, Congress must amend to the Act before the two companies can complete the proposed merger. However, both companies wanted Lockheed

Martin to be able to obtain, as quickly as possible, the maximum stake in COMSAT consistent with existing law. This necessitated a two-step transaction. In step one, which is currently before the FCC, a Lockheed Martin subsidiary is seeking authority to acquire up to 49 percent of COMSAT as an "authorized carrier" under the Satellite Act. Approval of step one is within the FCC's jurisdiction under existing law. The full public benefits of the transaction can only be achieved, however, upon completion of step two, which is the merger itself. We therefore request that Congress act swiftly on S. 376 to allow the merger to be completed.

Section-by-Section Discussion of S. 376

Chairman Burns, as stated earlier, you should be commended for introducing legislation with firm measures to promote INTELSAT privatization, and for undertaking the long overdue modernization of the 1962 Satellite Act. Although efforts were attempted with H.R. 1872 (the bill passed by the House of Representatives last year), we believe S. 376 improves upon that initial groundwork in major respects.

As this Subcommittee may recall, the Administration announced its strong opposition to H.R. 1872 at your hearing last September, but *well after* the House vote. The Administration objected to the approach taken in H.R. 1872 for many reasons, chief among them that: (1) it would retard, not promote privatization, by imposing "unrealistic" conditions; (2) it was "likely to reduce, not increase, competition" and raise prices to consumers; (3) it would "have significant adverse national security and maritime safety implications", and (4) it could "provoke retaliation from U.S. trading partners" and be inconsistent with the United States' WTO obligations.

In opposing H.R. 1872, the Administration also observed, and COMSAT fully concurs, "that Congress was instrumental in establishing INTELSAT and Inmarsat and that it may want to address their privatization in legislation." Moreover, legislation is essential in order to update the 1962 Satellite Act. With that in mind, COMSAT now

offers its views on specific provisions of S. 376.

INTELSAT Access to the U.S. Market

Section 603, "Restrictions Pending Privatization," will operate to prohibit INTELSAT from entering the U.S. market directly to provide any retail satellite communications services or space segment capacity to carriers or end users *until* a pro-competitive privatization is achieved. This provision is a major improvement to Section 641 of last year's House legislation, which would have required direct access to INTELSAT *before* privatization occurs. S. 376 appropriately uses U.S. market access as a lever to speed INTELSAT privatization, without harming U.S. consumers or competition in the process. COMSAT agrees with this approach for the following reasons.

INTELSAT currently does not sell satellite services directly in the U.S. retail market. Rather, it is a cost sharing international cooperative whose owners, the Signatories, jointly invest in the satellites and cover the expenses of operating the system. The Signatories in each country then sell the capacity they own on the system in their national retail markets. In the U.S., that investment responsibility and sales function are performed by COMSAT, the owner of the U.S. portion of the system.

As a U.S. corporation, COMSAT pays U.S. corporate income taxes on the revenue it generates from its INTELSAT business. As a U.S. common carrier, COMSAT is licensed and regulated by the FCC, and is fully subject to the U.S. antitrust laws in its common carrier activities. Additionally, as a U.S. publicly-traded corporation listed on the New York Stock Exchange, COMSAT is subject to the disclosure and filing requirements of U.S. securities laws.

None of this would apply to INTELSAT if it were permitted to directly access the U.S. market at the retail level *before* converting to a private corporation. As an intergovernmental international satellite organization, INTELSAT would be entirely

exempt from U.S. taxation. Quite correctly, S. 376 recognizes that this would give INTELSAT an unfair competitive advantage over every other satellite operator doing business in the U.S. and paying U.S. taxes. It would also deprive the U.S. Treasury of millions of dollars of tax revenue now paid by COMSAT -- creating, in effect, a U.S. taxpayer subsidy of INTELSAT.

As the recipient of this subsidy, INTELSAT would have no incentive to privatize more quickly if direct access were allowed now. It is this avoidance of U.S. tax expense that makes immediate direct access so attractive to the U.S. carriers. With no U.S. income, property or payroll taxes (on non-U.S. employees) to pay, INTELSAT could offer satellite capacity more cheaply than COMSAT, because its costs of production (building, customer support, operations, marketing, billing, etc.) would be lower. Is it any wonder why U.S. carriers and users find direct access so attractive? Yes, below-cost prices are appealing to U.S. consumers, but such "gains" are not attributable to any true efficiencies derived from direct access, but are an unfair advantage derived from INTELSAT's tax exempt status. For the Subcommittee's benefit, attached to my testimony is a study just completed in December 1998, by Professors Jerry R. Green and Hendrik S. Houthakker of Harvard University, and Johannes P. Pfeifenberger of The Brattle Group, which explain these points in greater detail. *See* Attachment 4, "An Economic Assessment of the Risks and Benefits of Direct Access to INTELSAT in the United States" ("Direct Access Study").

But below-cost access is not the only problem with direct U.S. retail market entry by INTELSAT prior to full privatization. INTELSAT is also totally immune from FCC regulation and U.S. antitrust laws. The FCC recently held in its *DISCO II Order* (implementing the WTO Agreement) that privileges and immunities much narrower in scope than those INTELSAT enjoys would distort competition and constitute grounds for denying entry to the U.S. domestic market. The same reasoning would apply with even greater force to direct U.S. market entry by INTELSAT.

Section 603 properly recognizes that to reward INTELSAT and foreign signatories with direct U.S. market access now takes away much of their economic incentive to privatize. Why? Because if these foreign PTTs are given the right to sell INTELSAT services in the U.S. immediately and on preferential terms (as compared to COMSAT), no reason exists for many of those same Signatories to work hard to change the intergovernmental nature of the organization. Direct access does nothing to bring about change to INTELSAT's structure; instead, it reinforces it. INTELSAT would gain expanded U.S. distribution channels, foreign Signatories would have immediate access to the U.S. market, and privatization would come to a grinding halt. The debate for commercializing INTELSAT would shift to greater direct access versus full privatization. No matter what benefits the proponents of direct access claim, this is far too high a risk to take -- especially since COMSAT's exclusive U.S. Signatory access will end forever immediately upon privatization anyway. As Section 603 recognizes, the quicker INTELSAT privatizes, the sooner American consumers will realize the *true* economic benefits of *fair* competition. Significantly, S. 376 requires INTELSAT privatization by the end of 2001.

Even before the prospects for privatization were on the near horizon, the FCC consistently rejected direct access to INTELSAT, finding that it would neither increase competition nor lower prices to end users. To quote the U.S. Court of Appeals in affirming that Commission decision:

> [The FCC] concluded that direct access was not in the public interest; it would not save users money either by increasing efficiency [or] enhancing competition. . . . In assessing the likelihood that direct access could lower costs, the agency examined each category of costs on which COMSAT based its space segment tariff. The FCC concluded that each category was properly allocable to the tariff. . . . In the Commission's view, direct access probably would not reduce any of these costs; it would, rather, simply redistribute the costs among COMSAT and the carriers. Western Union Int'l v. FCC, 804 F.2d 1280, 1285 (D.C. Cir. 1986).

Moreover, the FCC decided against direct access at a time when COMSAT was the

only international satellite company serving the U.S. Today, by contrast, there is significant facilities-based competition -- both intermodal (undersea cable) and intramodal (separate satellite systems). As the FCC has stated again and again, in view of this robust competition, COMSAT's role as the U.S. provider of INTELSAT capacity accords us neither a monopoly nor market power. Thus, the need for direct access is even less than when it was first rejected by the FCC.

This brings us now to the issue of the infamous COMSAT "mark-ups" and the remedy of direct access. It is probably the most misunderstood issue of all. COMSAT's critics attempt to demonstrate that COMSAT engages in monopoly pricing by comparing the difference between what COMSAT charges its customers at FCC-tariffed rates and the payments we make to INTELSAT for capacity. Equating that to a mark-up in the ordinary meaning of the term is simply false.

As the Administration informed the House Commerce Committee, it is "misleading" to use the term mark-up in this context, because the amounts COMSAT pays to INTELSAT do not cover all of the costs of providing the U.S. portion of the INTELSAT space segment. For example, COMSAT is required by law to perform numerous duties on behalf of *all* users as the U.S. Signatory to INTELSAT, which generate expenses entirely separate from what INTELSAT charges COMSAT for only the satellite capacity. In addition, COMSAT necessarily bears other costs in providing INTELSAT satellite capacity (e.g., engineering, operational support, transaction costs, customer billing, satellite insurance). Those costs must obviously be taken into account before actual margins can be calculated.

However, based on a calculation which erroneously excludes the foregoing costs, proponents of direct access often cite a three-year-old average mark-up figure of 68 percent. The truth is that, after COMSAT's unavoidable and recoverable costs are properly considered, COMSAT's actual operating margins are about 38 percent, virtually identical to our satellite competitors.

Finally, it is often said that if 93 other countries have adopted direct access, why should the United States lag behind? There is a very simple answer. Direct access in other countries is used as a means to address a problem that does not exist in the U.S. -- that is, complete control of all telecommunications by a single PTT or former PTT. Unlike COMSAT, these PTTs provide local exchange telephone service, domestic long distance service, and international service. Unlike COMSAT, they own capacity in fiber optic cables and other satellite systems. Unlike COMSAT, they control earth stations that access INTELSAT. The only way to break that bottleneck and promote alternatives for international services in those countries is to allow new entrants to access INTELSAT satellite capacity directly, thus bypassing the PTT. In the United States, we did it right initially. COMSAT was specifically created to prevent the dominant U.S. carrier, AT&T, from controlling *both* satellites and cables. Today, U.S. users do not lack for choices for sending traffic overseas. Other countries are just trying to catch up!

A few proponents of direct access attempt to make much of the fact that COMSAT subsidiaries operating in Argentina and the U.K. take advantage of direct access while COMSAT opposes its implementation in the U.S. Unlike other countries in which the Signatory is a telecommunications service provider, the Signatory in Argentina is its regulatory authority, an agency similar to the FCC. Thus, because the Signatory is not a service provider, there is no other way in Argentina to obtain space segment capacity except through direct access.

The U.K. is another aberration. In stark contrast to COMSAT, and even though BT is the second largest owner of INTELSAT, its investment share is only 5.7 percent compared to 18 percent for COMSAT. Unlike COMSAT, which is an independent supplier of space segment to U.S. carriers, BT simply uses the capacity itself as part of the retail services it offers to end users. Moreover, BT is a $26 billion company with a local exchange, long distance, and international business (which is about to join with AT&T). BT also owns capacity in undersea fiber optic cables and other satellite

systems.

Given these enormous differences, for BT to assert that it should be the model for the U.S. to follow on direct access is nonsensical and absurd. Offering capacity that COMSAT owns on the INTELSAT system is our company's primary business (and not a negligible investment as with BT), and therefore, the practical consequences of direct access here in the U.S. are not comparable to the U.K. situation at all.

Service Restrictions

Section 603(b) of S. 376 would prohibit INTELSAT and COMSAT from providing direct-to-home satellite services, direct broadcast satellite services, satellite digital audio radio services, and broadband satellite communications services in the Ka-band. These are some of the most promising new markets for the satellite industry, and many of our competitors are already prospering in these markets.

As a general rule, efforts to exclude one firm from participating in growth markets where that firm lacks market power are anti-consumer and anti-competitive. In this instance, however, we believe that Section 603 (b) is a significant improvement over the broad punitive service restrictions contained in the House-passed bill of last year, H.R. 1872. That bill provided that, during the transition to privatization, COMSAT would be prohibited from providing many of its *existing* services to U.S. consumers. H.R. 1872 defined those prohibited services to include high-speed data transmission and Internet access. COMSAT has already contracted with INTELSAT for capacity to provide these services and is, in fact, actively providing them today. This restriction, for example, would completely deprive consumers of COMSAT's new Linkway 2000™ technology for Internet applications, as described above.

The Administration squarely opposed the House bill's imposition of service restrictions, finding that they are "likely to reduce, not increase, competition in the U.S. market for satellite telecommunications services." In fact, in commenting on the

service restrictions that would be imposed by H.R. 1872, the Administration noted that:

> [T]he bill may effectively eliminate two important service providers from the most rapidly growing markets for satellite services -- markets which may be served by only a small number of firms, given the inherent structure of this industry (high fixed costs and large economies of scale). The result: fewer options and higher prices to U.S. consumers, including the federal government. Although the bill includes some protections if few alternative providers exist, they are unlikely to be sufficient to ensure that American consumers are not harmed.

Executive Branch Leadership

S. 376 is superior to the House-passed bill because it properly vests the leadership role for achieving a pro-competitive privatization in the President of the United States. The President has the Constitutional responsibility for treaty-making and for representing the United States in international fora, and INTELSAT is a treaty-based entity whose restructuring requires extensive "give-and-take" with foreign governments.

The Executive Branch has consistently taken the lead role in advocating and implementing U.S. policies concerning INTELSAT -- from its creation in the 1960s, to the treaty amendments in the 1970s, to the instructional process, which the Executive Branch coordinates before every INTELSAT Board meeting. The Executive Branch, through the Antitrust Division of the Justice Department, also has taken an active part in ensuring that the privatization of INTELSAT does not harm competition. Thus, a strategy employing Presidential leadership for handling the privatization negotiations and associated competition issues is sensible and constitutionally sound. In fact, it has been through the strong efforts of the Executive Branch that the successful full privatization of Inmarsat was achieved, and the divestiture of New Skies into a new private firm was realized.

Both S. 376 and the House-passed bill provide the FCC with authority to condition or deny applications by a privatized INTELSAT to provide satellite communications to and from the U.S. But again, only S. 376 does so effectively because it clearly states that, in making such a public interest determination, the FCC is bound by the President's certification that entry by the privatized entity would not distort competition in the U.S. market. This provision makes it clear that the FCC should not be able to undermine the international negotiating authority of the President, or to factor its views of the negotiated results into post-privatization licensing decisions.

The Administration has also criticized the House-passed bill on the basis of these issues. Specifically, it stated:

> Provisions of [the House-passed bill] purport to require the President to adopt specific positions on INTELSAT and Inmarsat privatization that would make international negotiations unwieldy and cumbersome, thus frustrating the President's ability to conduct foreign policy effectively. The bill also gives the FCC exclusive authority to determine if the outcome of multilateral negotiations is suitable -- a determination that should be made by the FCC in consultation with the Executive Branch.

Let us be absolutely clear on this point. COMSAT has no objections to the maintenance of the FCC's traditional public interest role in the regulation and licensing of satellite carriers doing business in the U.S. COMSAT's concerns are over efforts to expand that role into an area that normally is the preserve of the President of the United States -- the reformation of an international treaty organization.

Privileges and Immunities

Section 621, titled "Elimination of Privileges and Immunities," provides that COMSAT shall not have any immunity in its role as the U.S. Signatory to INTELSAT, except: (1) for those actions taken at the direction of the U.S. Government; (2) for actions taken in fulfilling obligations under the INTELSAT Operating Agreement; (3)

for INTELSAT Signatory activities which COMSAT does not support; and (4) in accordance with any other exceptions made by the President of the United States. Additionally, it provides that any liability of COMSAT shall be limited to the portion of any judgment that corresponds to COMSAT's percentage of responsibility. Finally, the elimination of privileges and immunities by this section is prospective from the date of enactment of the bill. With privatization, COMSAT's Signatory role will end and all residual privileges and immunities will terminate.

COMSAT supports this removal of privileges and immunities. This measure is fully responsive to those who maintain that COMSAT's existing limited immunity as the U.S. Signatory somehow gives the company an unfair advantage in the marketplace. As the courts have consistently ruled, when COMSAT competes in the market with other service providers, it has NO antitrust immunities. Moreover, when COMSAT acts in its Signatory role within INTELSAT, three agencies of the U.S. Government (State, Commerce and FCC) are sitting right there with us, and possess the authority to instruct COMSAT as to how to vote, or what position to take, on any issue. That is not a situation conducive to anticompetitive conduct. Indeed, the enormous success of our competitors belies the notion that COMSAT's limited immunity as the U.S. Signatory translates into any market advantages whatsoever.

Nevertheless, COMSAT is prepared to relinquish this Signatory immunity, subject to the reasonable safeguards enumerated in S. 376. Obviously, COMSAT should not be held liable for following the instructions of the U.S. Government at INTELSAT meetings. Nor would it be fair to expose COMSAT to liability if INTELSAT takes some action over the objections and opposing vote of COMSAT. We should only be held responsible for our own volitional actions, and S. 376 eliminates any possible doubts about that.

The draconian approach of the House-passed bill, H.R. 1872, which does not contain comparable safeguards, is both unfair and unworkable. For the reasons stated

above, COMSAT supports the provisions of S. 376 clarifying that it is not immune from suit or legal process with respect to its volitional, affirmative acts as the U.S. Signatory to INTELSAT, pending privatization. This provision is rational and fully consistent with the overall pro-competitive approach taken by S. 376.

Abrogation of Contracts

Section 622 of S. 376 expressly prohibits the nullification of COMSAT's contracts that are in effect on the date of enactment of this bill. COMSAT believes this provision is necessary and proper given the history surrounding these contracts, as explained below.

Section 622 in S. 376 stands in stark contrast to the so-called "fresh look" provision of the House-passed bill, which would have the U.S. Congress decide that COMSAT's customers should be free to walk away from the business commitments they freely entered into with COMSAT, all in exchange for significant COMSAT rate reductions. Based on those contracts, COMSAT in turn made long term, non-cancelable capacity commitments to INTELSAT to secure the lowest possible rates for our customers (and which are reflected in the steadily declining prices COMSAT charges under those contracts). If "fresh look" were adopted, COMSAT would therefore be left bearing the cost of the INTELSAT investment necessary to service those contracts. Under the Fifth Amendment to the Constitution, Congress is prohibited from taking private property without just compensation. To do so in the manner proposed by the House bill would clearly constitute a "taking", and expose the U.S. Treasury to significant damages claims.

The proponents of "fresh look" point to a handful of cases where companies adjudicated to hold unlawful monopolies were required to let other parties opt out of contracts that were being used to perpetuate those monopolies. In this case, however, a federal court has expressly found that COMSAT's long-term carrier contracts are *not* derived from an unlawful monopoly or exercise of monopoly market power, as had

been alleged by PanAmSat. Specifically, in 1996, the U.S. District Court for the Southern District of New York held:

> [A]lthough the record does reflect that Comsat entered long-term contracts with many common carriers, nothing in the record suggests that Comsat secured any of the contracts by means of any anticompetitive acts against PAS. On the contrary, the record suggests that for their own reasons, the common carriers elected to secure long-term deals with Comsat only after considering and rejecting offers from PAS. (emphasis added)

The FCC reached the identical conclusion. When COMSAT petitioned the FCC for non-dominant status in 1997, Hughes/PanAmSat again raised the issue of COMSAT's long-term contracts, claiming they "locked up" the market and restricted competition. Hughes/PanAmSat and others urged the Commission not to grant COMSAT non-dominant status without a condition imposing "fresh look". The FCC disagreed, and it is worth reading closely the reasoning behind this decision.

> We agree with COMSAT for the reasons stated below. COMSAT's long-term contracts do not impede COMSAT's customers from switching service providers. It is true that AT&T and MCI have entered into contracts with COMSAT that expire in 2003. The record lacks evidence of any other long-term contracts between COMSAT and its customers for switched voice service. COMSAT estimates that the three contracts represent approximately 25 percent of the U.S. switched voice service market. Given the growth rate in the switched voice service market, AT&T's and MCI's long-term contracts are likely to represent an even smaller share of this market today. Additionally, the contracts only obligate AT&T and MCI to transmit part of their international switched voice traffic using COMSAT. Based on our review of these contracts, we conclude that the contracts permit AT&T and MCI to use COMSAT's competitors for services. Therefore, notwithstanding these long-term contracts, we confirm the finding in our *August 1996 Order* that COMSAT's switched voice customers are sophisticated customers possessing significant bargaining power giving them the flexibility to route a significant portion of their switched voice traffic to their own transmission facilities or those of alternative carriers as they choose (emphasis added).

In light of these findings, it would be unprecedented for Congress to enact a statute mandating the abrogation of these very same contracts. It would be tantamount

to a Congressional determination that COMSAT's long-term contracts are anticompetitive. However, unlike the Courts or the FCC, Congress does not adjudicate disputes among private parties as a matter of constitutional separation of powers. Thus, we submit respectfully that any Congressional determination to simply nullify these contracts by legislative act would amount to an unconstitutional bill of attainder.

Application of "fresh look" in this case is unsupportable from a policy perspective as well. COMSAT negotiated the subject long-term contracts with the three largest long distance companies (i.e. AT&T, MCI and Sprint) to carry international traffic using INTELSAT's facilities. These contracts were designed to guarantee a steady stream of traffic in the face of increased competition from other satellite systems and fiber optic cables. In return for long-term traffic commitments, COMSAT dropped its prices considerably. This is no different than what happens every day in many commercial settings, whether its lower rates for multi-year magazine subscriptions or season tickets to sporting events. To be sure, these carriers themselves offer their customers reduced tariff rates in exchange for longer service commitments.

COMSAT's long-term carrier contracts, which are non-exclusive, were renegotiated in 1993 and 1994, subsequently modified, and all at a time when competing satellite systems were permitted to -- and did -- bid for this traffic. Based on the long-term guarantee of traffic resulting from COMSAT's carrier-contracts, COMSAT contracted with INTELSAT for the capacity to handle that traffic and designed satellites to assure the carrier traffic could be accommodated. COMSAT's obligations with INTELSAT would remain in force, even if the U.S. carrier contracts that formed the basis for the commitments we made to INTELSAT were struck down by Congress. COMSAT's liability to INTELSAT currently exceeds $500 million over the life of those contracts, and the investments in satellites built with capacity to accommodate the carriers would be stranded. Under these circumstances, "fresh look" is completely unjustified, and as noted above, would result in the U.S. government

being liable for substantial damages to COMSAT for taking our property without just compensation.

Other Issues

While S. 376 is a fairly well-balanced bill, COMSAT does have concerns with some of its provisions. First, we are concerned with the requirement that if INTELSAT fails to privatize fully by January 1, 2002, the U.S. must withdraw as a party to the INTELSAT organization. We believe that this is too extreme a sanction for INTELSAT's failure to privatize fully by the stated deadline. It is key that the United States maintain a leadership role in the pro-competitive privatization of INTELSAT. To do so effectively, it must maintain its commitment and active involvement throughout the entire process -- even if that process should be delayed along the way.

The withdrawal provision could actually have the perverse effect of creating incentives for INTELSAT's satellite competitors to attempt to find ways to delay privatization by raising frivolous -- but time consuming -- issues along the way. Think about it. If the deadline is not met, and COMSAT must withdraw from INTELSAT, what happens to all the traffic now carried by COMSAT? It necessarily will have to be reallocated to COMSAT's competitors, and/or flow North or South to foreign Signatories in Canada and Mexico, respectively. U.S. legislation to privatize INTELSAT should not include incentives to penalize an American company for dilatory actions of foreign Signatories.

Mandatory withdrawal at a time certain is also counterproductive. If the Congress wants INTELSAT to privatize by a date certain, it is necessary for U.S. negotiators to stay actively engaged in the process. If the process slips and is not fully completed by January 1, 2002, and the U.S. disengages, we only hurt ourselves and the U.S. consumers that rely on the system, including national security users. COMSAT respectfully submits that the prospect of denying U.S. retail market access, and the

restrictions on service expansion pending privatization set forth in S. 376, are sufficient incentives to privatize without a mandatory withdrawal provision.

COMSAT was also disappointed to observe that S. 376 does not contain the regulatory parity provision contained in S. 2365 in the 105th Congress. It is imperative that, in a competitive marketplace, all satellite system operators and satellite service providers compete against each other based on a common set of rules. Contrary to claims being made by some competitors, this would not necessarily mean more regulation for them -- just the same, equal framework applied to all. We strongly urge that this issue be revisited during the debate on this bill.

Finally, we have some concerns over the language used in Section 631, which is a new law intended to prevent the warehousing of orbital slots and spectrum. COMSAT fully supports this concept. No satellite provider should be able to reserve orbital slots with "paper" satellite filings or reserve spectrum not required for operation of their systems. For example, Loral Orion has tied up an orbital slot for 14 years without any use, a problem recently brought to the FCC's attention by another U.S. satellite competitor, Columbia Communications. In contrast, INTELSAT has acted responsibly and de-registered seven of its unused orbital slots in December, 1998.

Unfortunately, Section 631 is too vague to achieve its stated goal of preventing warehousing. It states that operators must "make efficient and timely use" of orbital slots and spectrum, and if such "assurances cannot be provided", satellite operators "shall" relinquish their rights to these resources. As a practical matter, whether one makes "efficient use" of a slot or spectrum is far too subjective given the penalty for non-compliance. Does efficient use require comparisons to other providers? Does it favor operators with earth stations employing digital compression technologies or that employ collocation within orbital slots? Does it mean that companies with older satellites in-orbit must relinquish a slot if another company with newer satellites, or satellites having greater capacity, seek the slot? Should inclined orbit satellites be

required to be de-orbited before their useful life has expired?

We respectfully submit that the vagueness of the language as drafted in Section 631 will ultimately defeat its purpose. It needs to be reworked to incorporate a more objective test. One approach might be for the system operator to bear the burden of demonstrating that an orbital slot or spectrum requirement is necessary and appropriate for *actual* system operations and planning. The International Telecommunication Union ("ITU") is also in the midst of resolving this issue with "due diligence" procedures that will prevent warehousing. Measures being considered include a time limit on filings and evidence of a launch service contract.

Conclusion

Mr. Chairman, I would like to thank the Subcommittee again for holding this hearing today and for allowing COMSAT to present its views on S. 376. We are confident that passage of this legislation will spur the timely and pro-competitive privatization of INTELSAT, while allowing the benefits of COMSAT's merger with Lockheed Martin to be realized as quickly as possible. Above all, the public interest in a deregulated and even more competitive international satellite industry is most certainly achievable in the near term with this legislation.