

My name is James W. Cuminale. I am the Senior Vice-President and General Counsel of PanAmSat Corporation. I have testified before this committee twice, the last time in September 1998 regarding S. 2365. I said then that S. 2365 admirably stated the policy objectives of creating a competitive marketplace for international satellite communications, but was very short on practical implementation of these objectives. Ironically, the current bill, S. 376, is better in stating the pro-competitive objectives, but even less practical in implementing them. Because S. 376 takes a step backward, I would like to use my time today to be very clear as to what is at stake here.

Let's start by drawing a line between what are U.S. domestic problems, which the Congress can solve without bringing along 140 other countries, and what are international problems, as to which Congress can motivate other countries to help solve. One pressing domestic problem is that, unlike most other advanced nations, including the 93 who permit direct access, the U.S. is content to leave in place a private monopoly on access to Intelsat: A private monopoly that provides no products or services, but merely exacts a toll on all U.S. access to the Intelsat satellite system.

Our other domestic problem is that we continue to countenance the provision of commercial satellite services by an inter-governmental, treaty-immune satellite cartel; we even have given the Intelsat cartel a tax-haven home in the District of Columbia to compete with private satellite companies. This is not only unfair to the competitors, it is unfair to D.C. taxpayers. Let's begin with the tollbooth and —

Eliminate the Private Monopoly Tax on Satellite Access

In the Communications Satellite Act of 1962, Congress created a private monopoly in Comsat — a monopoly that allows it to collect a tollbooth tax on all transmissions to or from Intelsat satellites providing service to and from the United States. By law Comsat collects this private tax even though it does not own or operate the wires and dishes used to reach those satellites, it does not provide any service to carriers in connection with use of those satellites, or allocate any U.S. bound traffic among carriers using those satellites. Today, customers must write Comsat a check, including a surcharge of up to 68 percent over Intelsat rates, each time they use an Intelsat satellite. This private tax comes right out of the pockets of U.S. consumers.

This law makes no sense here in the U.S. and it is an embarrassment around the world because it makes it more difficult for us to argue for the end of access monopolies overseas. The law granting Comsat a private monopoly to tax U.S. consumers should be repealed immediately, as part of the legislation that allows Lockheed is permitted to acquire Comsat.

When Lockheed Martin urges you to amend the '62 Act to let it buy 100 percent of Comsat, they are really saying is "let us buy Comsat's private monopoly tollbooth." It is an absurdity that the tollbooth exists at all. It would be unconscionable if it is permitted to be sold.

Repeal of the private monopoly will not put Comsat out of business or take anything away from Lockheed. Comsat, and after the sale, Lockheed, would still be the largest shareholder in Intelsat 's 20 plus global satellites. In fact, Comsat itself is currently the largest shareholder in New Skies, last year's private spin-off from Intelsat, which operates six former Intelsat satellites for which Comsat now has no right to charge a private tax on access. Obviously, Comsat felt that the revenue generated from use of the satellites alone was sufficient for it to support investment in New Skies. The same result applies to Intelsat — it is a sound investment for Comsat, and Lockheed, even without the monopoly tollbooth tax. Another thing we can do, taking both domestic and international actions, is —

Terminate the U.S.--Sanctioned Cartel Providing Commercial Satellite Service

The Intelsat satellite cartel was established decades ago when global commercial satellite service was simply too risky for any one company to undertake. In addition, at that time there generally was only one large telecommunications provider, usually a government ministry or corporation, operating in each country. As a result, at the urging of the United States, an international cartel composed of one monopoly telecommunications provider from each country was formed to provide global satellite service. The United States agreed to host the headquarters of this new cartel tax free in the District of Columbia, leasing them valuable land on Connecticut Avenue for the sum of one dollar per year.

Today private companies have established global and regional satellite networks that provide commercial service. In many countries, national laws have changed and there are numerous telecommunications providers competing in the marketplace. Yet the cartel still exists and it has priority access to satellite slots and below commercial market financing. Monopoly national telecommunications providers still meet today in the rent free headquarters on Connecticut Avenue, courtesy of the United States, to set prices and work against open market access by other satellite providers.

Competitive satellite providers seek an end to this injustice. Domestically, the United States should repeal the headquarters agreement that provides diplomatic immunity, tax protection, and free rent to this international satellite cartel. Internationally, we actively should seek to terminate Intelsat by spinning off its remaining satellite assets to two new private companies, in addition to last year's New Skies spin-off. This is what a pro-competitive privatization is all about. Termination of Intelsat through privatization will not result in the loss of the satellite assets or financial investment by those who built the Intelsat system. As New Skies will demonstrate, the Intelsat satellite assets can be used to provide competitive services without diplomatic immunity. When there is a pro-competitive privatization and there is no more

intergovernmental entity, the private successors to Intelsat will be treated the same as all other private regional and global satellite systems.

The end of Intelsat as an intergovernmental entity also does not mean the end of Comsat. As I've said, Comsat is the largest single shareholder in Intelsat and the New Skies spin-off. All of the revenue stream from Comsat's investment in New Skies six, and Intelsat's 20 plus satellites will remain. Moreover, Comsat has been working hand in glove with the world's key telecom companies for over 30 years; surely they can use these contacts and Intelsat's former satellites to develop a successful business.

Finally, ending Intelsat will not result in the loss of satellite services to any nation currently receiving such service. Nor will it prevent service to any country that seeks satellite services. Private companies will provide these services, because, unlike undersea cables, satellite coverage is cost-effective throughout broad areas of the earth's surface. And if there's any doubt about the capacity of private companies to serve poor countries, the United States unilaterally can assure global satellite service. All the FCC has to do is require that, as a condition for access to the U.S. market, every private satellite operator must provide service upon request to any country that is within the coverage area of its satellites and has the necessary facilities and infrastructure to send and receive satellite service.

Another international problem posed by the Intelsat system is that it makes it more difficult for private competitors to get market access to countries that are Intelsat members. Therefore —

The United States Should Act to Ensure Fair Market Access

One of the greatest problems posed by the continued existence of Intelsat as a government-sanctioned cartel providing commercial services is that the members of the cartel, the national telecommunications providers, have a direct financial interest in requiring use of the Intelsat system. As a result, these national providers work through Intelsat to block access to their countries by services using competing private satellite services.

To ensure that the privatized entities created through the termination of Intelsat do not impede market access, the United States should use access to the U.S. market as leverage to assure that U.S. companies have access to foreign markets. This leverage should be applied to the privatized spin-offs from Intelsat. The FCC should allow access to the United States market by a privatized spin-off only if it:

- 1) is incorporated as a private company in a country which has signed the World Trade Organization Basic Agreement on Telecommunications Services;

2) does not have any employees, directors, officers, or assets in common with other privatized Intelsat spin-offs or ownership by monopoly telecom companies that control access to their home markets; and

3) has not obtained satellite slots, or contracted for satellites after January 1, 1999, other than by using the same satellite registration process and financial terms available to all other private commercial satellite service providers.

Some Comments on S. 376

Measured against these goals, S. 376 simply does not go far enough. It not only keeps the private monopoly tollbooth, it permits Lockheed Martin to buy Comsat's right to tax U.S. consumers. It does nothing to end Intelsat's tax-free status in the District of Columbia or its other legal immunities in the U.S.. The bill doesn't end Intelsat, it merely threatens the end of U.S. participation in Intelsat, while still creating many back-end exceptions for continuing U.S. participation. The bill ousts the FCC from any meaningful determination as to what is a pro-competitive privatization, improperly substituting the President for the independent licensing agency. And the bill does not use the leverage of U.S. market access to open up markets overseas — access that is blocked by Intelsat members with the active support of Intelsat.

For over a decade, PanAmSat has been calling for the Congress to step in and correct the legislative framework for the international satellite industry. The time is now.