# STATEMENT OF RODERICK KELVIN PORTER

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**FEDERAL COMMUNICATIONS COMMISSION**

**Hearing on
the Open-market Reorganization for the Betterment
of International Telecommunications Act**

**Before the
Subcommittee on Communications
Committee on Commerce, Science and Transportation**

**United States Senate**

**March 25, 1999**

## Executive Summary

Thirty-seven years ago, Congress adopted the Communications Satellite Act of 1962. It was well conceived and it was tailored to the times. It established a policy that led to the creation of INTELSAT and Inmarsat. INTELSAT was created with the goal of developing a satellite system that would provide global connectivity, and Inmarsat was formed for the purpose of improving maritime communications and communications for the safety of life at sea.

The landscape of the communications satellite industry has changed markedly over the past 37 years. The international satellite organizations are faced with competition from private companies through both satellite and submarine fiber optic cables. U.S. policy since the mid-1980's has focused on promoting this competition as a means of expanding customer choice and achieving lower rates. The 1962 Satellite Act, however, has undergone little change during this period of change in the industry.

INTELSAT and Inmarsat have been concerned that their current intergovernmental structure entailing unlimited liability for investors and a slow decision-making process inhibit their ability to respond to competition. Competitors are concerned about potential anticompetitive conduct by INTELSAT and Inmarsat, and have focussed particularly on INTELSAT's and Inmarsat's global access to markets, special privileges and immunities, control over significant satellite capacity and orbital locations, and the potential for some investors in these intergovernmental organizations to restrict overseas market access for new entrants.

Both INTELSAT and Inmarsat have been taking steps to restructure themselves in

response to competitive pressures. In 1995, Inmarsat created a private affiliate to provide hand-held services and plans to privatize itself on or about April 15 of this year. Last year, INTELSAT created a private affiliate, New Skies, to provide video and multi-media services. INTELSAT now is considering additional restructuring options, including privatization.

We agree that the ultimate goal of legislation and regulation in satellite communications is to benefit consumers through the encouragement of a truly competitive market. We support Congress's determination that the time is ripe for reform of the statutes that govern the rapidly changing satellite communications market. Privatization of INTELSAT and Inmarsat would help promote competition in the commercial satellite communications market, and thereby benefit consumers.

The United States has been a strong proponent of privatization of the intergovernmental organizations -- both to improve their competitiveness and to eliminate the potential for market distortion that flows from their intergovernmental status. INTELSAT must be privatized in a way that allows it to remain viable in the world market while preserving our commitment to global satellite connectivity. At the same time, however, we need to ensure that its legacy as an intergovernmental organization does not impede the ability of private competitors to enter the market.

We recognize that, even though privatization of INTELSAT will be the result of international negotiation, Congress has an independent and active role in the process. In fact, it was Congressional leadership in the 1960s and U.S. policy established by the 1962 Act that lead to the creation of INTELSAT. Congress is in the position to have the same degree of influence in the 1990s for INTELSAT's transformation into a true market player.

We support legislation to articulate a national satellite policy based on pro-competitive

principles. We agree with the principles jointly stated by Chairman Burns and Chairman Bliley in their letter to Chairman Kennard. In keeping with these principles, we believe that legislative criteria for privatization of INTELSAT might usefully entail: (1) conversion to a publicly held corporation listed and traded on public exchange; (2) opportunity for participation in the private company by entities other than current signatories; (3) elimination of all privileges and immunities; (4) location in a jurisdiction with effective competition laws and regulatory oversight; (5) availability of non-exclusive access and distribution arrangements that serve customer needs; and (6) continued provision of services to developing countries by INTELSAT.

We also support satellite reform legislation that would eliminate those provisions of the 1962 Act that are no longer necessary or relevant to achieving a pro-competitive privatization of those organizations. Comsat ultimately should evolve into a company with no special Congressional charter or privileges or obligations. The Commission has taken several important actions in the last three years to deregulate Comsat in an effort to help it achieve a market position that is no more hindered or protected by regulation than that of its competitors. The overlay of government oversight of Comsat that exists as a result of Comsat's special role in INTELSAT and Inmarsat should be eliminated upon privatization.

S.376 is designed to achieve these goals. Moving forward with legislation of this nature would both be timely and helpful to U.S. efforts to promote a robust and competitive satellite communications market globally. We look forward to working with you on these critical issues.

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Mr. Chairman and members of the Subcommittee, thank you for giving me an opportunity to appear before you today to discuss the Open-market Reorganization for the Betterment of International Telecommunications Act (S.376). We agree that the ultimate goal of legislation and regulation in satellite communications is to benefit consumers through the encouragement of a truly competitive market. We will take all steps necessary in support of Congress's determination that the time is ripe for reform of the statutes that govern the rapidly changing satellite communications market. Privatization of INTELSAT and Inmarsat would help promote competition in the commercial satellite communications market, and thereby benefit consumers. Achieving privatization is and will continue to be both challenging and promising. It is challenging because other countries that are members of these international organizations must be convinced that a solution that promotes competition is in their interests. It is promising because successful privatization of these organizations may bring new market opportunities for satellite service providers throughout the world and increased choice for consumers here at home.

Legislation that both establishes U.S. policy on privatization of INTELSAT and Inmarsat and promotes further competition in the commercial satellite market is both timely and

appropriate. We appreciate the opportunity to work with you to reform the U.S. legislative framework governing satellite services and to implement pro-competitive and deregulatory measures.

**The Communications Satellite Act of 1962**

The Communications Satellite Act of 1962 was written when the primary goal of U.S. satellite policy was the successful deployment of a global satellite system that would provide world-wide telephone connectivity and video coverage. To a large degree, the 1962 Satellite Act assumed the existence of economies of scale calling for establishment of a single global satellite system. The Act created Comsat as a publicly-traded private corporation to achieve this goal by developing and investing in the INTELSAT system. At the same time, Congress established extensive government oversight of Comsat. In 1979, Congress expanded Comsat's role, making it the U.S. investor in Inmarsat. Today, Comsat is traded on three U.S. exchanges, with 1998 revenues of more than a half billion dollars. The company has restructured itself to focus its business on international satellite and digital networking services. The challenge for COMSAT will be to adapt to the fundamental changes that are taking place in INTELSAT and Inmarsat as a result of competitive challenges to those organizations.

**Deregulation of COMSAT**

The goal of a competitive market that benefits consumers is furthered by the existence of a level playing field. Thus, the Commission has taken several important actions in the last three years to deregulate Comsat in an effort to help it achieve a market position that is no more hindered or protected by regulation than that of its competitors. In 1996, the Commission waived its dominant carrier tariffing rules and permitted Comsat to file tariffs for switched voice and private line service with 14 days notice and without cost support. In 1997, the Commission

waived its dominant carrier tariffing rules and permitted Comsat, as do its competitors, to file tariffs for full time video and occasional use video on a streamlined basis.

The Commission granted Comsat significant additional regulatory relief in 1998. Specifically, the Commission found Comsat non-dominant in the provision of switched voice, private line, and occasional use video in competitive markets, and in the provision of full time video and earth station services in all geographic markets. Together, these markets account for over 92% of Comsat's INTELSAT revenues. The Commission also found, however, that Comsat is still dominant in the provision of switched voice, private line, and occasional use video service in non-competitive geographic markets. Most recently, in February of this year, the Commission established an incentive based form of regulation in lieu of burdensome rate of return regulation for service in which Comsat remains dominant. In addition to these actions, the Commission has eliminated requirements for Comsat to (1) obtain FCC approval to invest in INTELSAT satellites; and (2) file certain yearly reports to the FCC normally required of rate regulated carriers.

## INTELSAT and Inmarsat

The U.S. effort in creating the global satellite system envisioned by the 1962 Satellite Act was a complete success. Today, INTELSAT has 143 members and operates a fleet of 19 satellites accessed by thousands of earth stations. INTELSAT provides services to hundreds of customers in over 200 countries. INTELSAT has revenues of approximately $1 billion and it has assets worth over $3 billion. The connectivity provided by the INTELSAT system makes possible the delivery of voice, data, and video communications anywhere on the globe.

Based on the INTELSAT Intergovernmental Organization (IGO) model, Inmarsat was established as an IGO in 1979 to improve maritime communications, particularly

communications for distress and safety of life at sea. Inmarsat has 84 members and operates eight satellites providing global maritime, aeronautical, and land mobile communications. More than 140,000 terminals of various types are in use. Inmarsat revenues for 1999 are projected to be about $450 million.

INTELSAT and Inmarsat own and operate satellites and the associated facilities while signatories and other entities own and operate ground facilities accessing the satellites. Each IGO is made up of parties and signatories. Parties represent governments' interest in the organization through the Assembly of Parties that meets bi-annually. Signatories are the investors in the satellite system. Some signatories are private entities, but many are wholly or partially owned by foreign governments. Investment is tied to the amount of traffic a signatory carries over the system. The largest signatories are represented on the INTELSAT Board of Governors and the Inmarsat Council. These bodies make the major commercial decisions for each organization. It is important to note that each signatory represents its own interests and does not have a fiduciary obligation to the entire organization. Comsat is the U.S. signatory to both INTELSAT and Inmarsat.

In 1962, when INTELSAT was formed, the world's telecommunications infrastructure was quite different than it is today. In the early days, most private entities considered the use of satellites for telecommunications services to be very risky and expensive. Advances in technology as well as increased satellite capacity have made it feasible for new entities to enter the global telecommunications market. INTELSAT now faces competition from private systems. Since 1962, application of satellite technology to communications has resulted in new and varied options to consumers and has become the province of private companies competing to satisfy consumer needs. United States policy evolved in the 1980's to introduce competition to INTELSAT. The authorization of competing U.S. systems required a presidential determination that such competition was, under the 1962 Satellite Act, in the

national interest. Following that determination, the FCC began the licensing process for competing U.S. systems. Today, private industry provides satellite services for telephony, direct-to-home television, other video and data services as well as maritime, aeronautical and land-mobile services. In the near future private companies will introduce services such as broadband internet, expanded video services and hand-held global mobile communications. In the broadband video market and mobile satellite services markets private companies plan to invest billions just to start operations.

Growth in global telecommunications has not been limited to satellite-delivered services. Over the last decade the capacity of transoceanic fiber optic cables has dramatically increased. Consequently, INTELSAT's share of the market for international telephone service has fallen. Although public switched telephony is still its largest revenue source, the percentage of INTELSAT's revenue stream from public switched service has fallen and the revenues from certain new services are growing. Today, close to half of INTELSAT's total revenues are derived from public switched telephone service, down from 76 percent in 1988. In addition, INTELSAT's share of the public switched service market is expected to continue to decline largely due to competition from fiber optic undersea cables. In response to the changing market, INTELSAT has expanded into new areas, including the market for broadcast video where it faces competition from new satellite-based companies.

INTELSAT has taken steps to react to the changing marketplace and the advent of competition. Last year, it created New Skies Satellite, N.V., a private commercial affiliate Netherlands company, to provide video and multimedia services on a global basis. New Skies is now operating as a wholly-owned affiliate of INTELSAT and INTELSAT's signatories. Five satellites have been transferred from INTELSAT to New Skies and a sixth satellite is scheduled to be launched this year. Over 90 earth stations in the United States currently are operating with New Skies on a special temporary authority basis pending Commission consideration of

their applications for permanent authority to operate with New Skies.

INTELSAT itself recognizes the need to become a more efficient organization and is considering restructuring options, including privatization. Privatization will lead to operational flexibility, speedier decision-making by a management responsive to a fiduciary board of directors, limited liability by investors, and better access to capital through public and strategic investors

Unlike INTELSAT, Inmarsat's revenue stream has maintained itself steadily over the years without significant change. Competition for Inmarsat, however, is starting to develop. Inmarsat now competes with private consortia largely composed of U.S. firms such as Motorola, Loral and American Mobile Satellite Corporation. In anticipation of the development of competition, Inmarsat has undertaken efforts to restructure its operations. In January 1995, Inmarsat created an affiliated private company, ICO Global Communications Ltd., to provide global mobile hand-held communications services. Inmarsat will privatize on or about April 15 of this year. Inmarsat's decision to privatize was based on the recognition that the organization could not effectively compete with private systems under an intergovernmental structure that conferred unlimited liability on its investors and involved an inefficient decision-making mechanism slow to react to competitive challenges.

Under the privatization, Inmarsat will transfer its assets (satellites, associated facilities, headquarters building, etc.) to a newly created private company incorporated in the United Kingdom. Existing Inmarsat signatories will be allowed shares in the corporation in proportion to their investment shares in Inmarsat. The newly created company will own and operate the satellites previously owned and operated by Inmarsat and will provide existing commercial and safety services. It will not have the privileges and immunities bestowed on the current intergovernmental organization. Current Inmarsat contracts will be novated to the corporation.

Existing land earth station operators will distribute the services of the corporation pursuant to a Land Earth Station (LES) Operator Agreement with the company. The newly created company will retain the name "Inmarsat". An Initial Public Offering (IPO) is anticipated within two years. A residual intergovernmental organization consisting of a small directorate will be created to ensure that the new company continues to provide GMDSS (Global Maritime Distress and Safety Services) under a Public Services Agreement with the IGO. The IGO will not have any control over the operations or facilities of the new Inmarsat. Instead the IGO will have an agreement with the new Inmarsat whereby the IGO will have the ability to ensure that Inmarsat meets its obligations to provide GMDSS.

## Considerations for a New Legislative Framework

The Communications Satellite Act of 1962 was enacted to achieve a goal long since accomplished. The focus of U.S. policy has been, since the mid-1980's, the development of competition. The Communications Satellite Act, however, has undergone little change. We believe that new legislation could seize on a present opportunity to articulate current U.S. national policy based on pro-competitive principles.

We believe that privatization will help promote greater competition in the satellite communications market and will make INTELSAT a more effective competitor. INTELSAT's current and potential competitors are concerned about their ability to compete with INTELSAT due to INTELSAT's global access to markets, control over significant satellite capacity, and special privileges and immunities as well as the potential ability of some signatories to keep competitors out of their home markets. In the countries that have not yet privatized their communications systems, the government and the telecom provider acting as signatory are the same entity. As a result, some INTELSAT signatories may be in a position to affect their government's market access decisions, and could impede entry by competitors of INTELSAT.

Significant steps were taken in 1997 to address the market access question. The World Trade Organization (WTO) Agreement on Basic Telecommunication Services provides for commitments by 72 countries to open their markets for basic telecommunications services, and 49 of these countries have made commitments for satellite services. In addition, 55 of the parties to the WTO agreement also signed the Reference Paper on Pro-Competitive Regulatory Principles. The Reference Paper contains a binding set of competition rules and calls for separation of a country's telecommunications regulator from its national telecommunications service provider. Many INTELSAT members, however, have not made WTO commitments. Privatization eliminating INTELSAT's intergovernmental imprimatur and permitting diverse ownership in the privatized organization would be an effective means of further promoting greater market access.

We recognize that even though privatization of INTELSAT will be the result of international negotiation, Congress has an independent and active role in the process. In fact, it was Congressional leadership in the 1960s and U.S. policy established by the 1962 Act that lead to the creation of INTELSAT. Congress is in the position to have the same degree of influence in the 1990s for INTELSAT's transformation into a true market player.

We agree that Satellite reform legislation is an appropriate tool by which to establish policy guidelines for U.S. efforts to privatize INTELSAT. Legislation also provides the opportunity to eliminate provisions of the 1962 Satellite Act no longer necessary or relevant to achieving a pro-competitive privatization. Upon INTELSAT's privatization, all remaining provisions of the 1962 legislation could then be eliminated. Comsat would then evolve into a company with no special Congressional charter or privileges or obligations. The overlay of government oversight and regulation of Comsat that exists as a result of Comsat's special role in INTELSAT and Inmarsat would be eliminated upon privatization.

In a letter to Chairman Kennard, Chairman Burns and Chairman Bliley stated the following principles upon which to base legislation: (1) privatizing INTELSAT by a date certain; (2) enabling the United States to participate in a restructured Inmarsat through legislation; (3) a pro-competitive privatization of INTELSAT and Inmarsat, eliminating IGO and Comsat's derivative privileges and immunities and their potential ability to possibly warehouse orbital locations; (4) non-discriminatory competition; (5) use of market access as an incentive for a pro-competitive privatization; and (6) elimination of ownership restrictions on Comsat and other deregulation ending the role of the U.S. government in commercial satellite operations. These principles support our stated policy objectives and we agree that satellite reform legislation based on these principles would establish a clear policy framework for pursuit of pro-competitive privatization of INTELSAT that will result in benefits for U.S. consumers.

In keeping with these principles, we believe that legislative criteria for privatization of INTELSAT might usefully entail: (1) conversion to a publicly held corporation listed and traded on public exchanges; (2) opportunity for ownership and participation in the private company by entities other than current signatories; (3) elimination of all privileges and immunities; (4) location in a jurisdiction with effective competition laws and regulatory oversight; (5) availability of non-exclusive access and distribution arrangements that serve customer needs; and (6) continued provision of services to developing countries by INTELSAT. S.376 is designed to achieve these goals. Moving forward with legislation of this nature would both be timely and helpful to U.S. efforts to privatize INTELSAT. In that spirit we suggest several comments for the Subcommittee's consideration on certain provisions of the bill.

Legislation has the potential to provide effective incentives for INTELSAT to privatize in a pro-competitive manner. The availability of the U.S. market certainly would create such an incentive. We note, however, that S.376 would determine the availability of the U.S. market to

INTELSAT through a Presidential certification process that apparently would be undertaken prior to completion of negotiation of the details of the privatization. The bill provides for a Presidential certification that entry by a privatized INTELSAT into the U.S. market will not harm competition to be made upon an INTELSAT Assembly of Parties decision creating the "legal structure and characteristics" of a privatized INTELSAT. The FCC would be bound by this determination in its licensing process. It has been our experience in recent negotiations involving the Inmarsat privatization and the creation of New Skies by INTELSAT that Assembly decisions on legal structure and characteristics are made with negotiations on important details and documents on implementation yet to be completed. Typically, these details and documents have been finalized by later meetings of the INTELSAT Board of Governors or Inmarsat Council.[1] Thus, under S.376, a Presidential certification binding the FCC would be made absent the availability of the final details of the privatization.

We recommend that the Subcommittee consider preserving the independent regulatory review of the effects on competition by a privatized INTELSAT's entry into the U.S. market in any legislation. Presidential certification as to the outcome of Assembly of Parties decisions would then be based on a national interest standard and other traditional Executive branch

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1 *See* Report of the Twelfth Session of the Inmarsat Assembly of Parties, Assembly/12/Report (May 1998). *See* also Assembly/13 Report (October 8 (1998). The Inmarsat Assembly of Parties determined to decide upon the legal structure and characteristics of Inmarsat's privatization, but left final decision on the details and documents associated with the privatization to subsequent meetings of the Inmarsat Council held over a five month period. Most implementation documents were in draft stages when the Assembly made its decision to privatize. Similarly, a number of documents implementing the creation of New Skies were finalized by the INTELSAT Board of Governors after the INTELSAT Assembly decided to create New Skies. Certain key documents underwent extensive changes and are subject to Commission review in connection with applications before it to operate New Skies in the United States.

2 There is precedent for action on a satellite policy issue whereby there is first a Presidential determination based on national interest considerations and then, following that, FCC licensing actions based on the Commission's public interest standard that implemented the policy determination. In 1983, the Commission received several applications to operate separate satellite systems in competition with INTELSAT. The Commission withheld action on the

standards.[2] Subsequent Commission action through the licensing process would involve consideration of the full results of the privatization based on a public record with accountability to the courts. It would provide a means of maintaining U.S. leverage in the final stages of the negotiating process and assuring that the principles that the United States agreed to at the Assembly have been achieved through implementation.[3] This approach also would continue the distinction the Commission has drawn between WTO-covered and non-covered satellite services in establishing a licensing policy to implement the WTO Agreement.[4]

S.376 identifies two means by which the availability of the U.S. market would be used as incentives for a pro-competitive privatization of INTELSAT: (1) withholding the availability of direct access in the United States; and (2) prohibiting INTELSAT's provision of Ka-band, DTH, DBS and DARS. INTELSAT does not currently provide Ka-band, DTH, DBS and DARS

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applications at request of the Executive branch pending a decision under Section 102(d) of the 1962 Satellite Act that competing systems were in the national interest. The President made this determination in 1984. Presidential Determination No. 85-2 of November 28, 1984 49 Fed. Reg. 46937 (November 30, 1984). The Commission conducted a rulemaking and issued conditional licenses in 1985. *See* Permissible Services of U.S. Systems Separate from the International Telecommunications Satellite Organization (INTELSAT). 101 FCC 2d 1046 (1985); On recon, 61 RR 649 (1986); further recon, 1 FCC Rcd 439 (1986). In establishing a regulatory framework for considering applications for competing systems, the Commission considered competition and related issues in connection with the applications.

[3] The Executive branch has previously asked the Commission to utilize its licensing process to assure that results of negotiations in connection with Inmarsat's creation of ICO Communications were in fact properly implemented. *See* Comsat Authority to Participate in Procurement of the Facilities of the ICO
Global Communications System; FCC 99-21 (released February 25, 1999). In testimony before this subcommittee last September, the Administration stated that any legislation should "recognize and incorporate the existing flexible authority of the FCC and the Department of Justice to protect competition and promote the public interest in the rapidly changing telecommunications market".

[4] The United States excluded from its scheduled WTO coverage one-way satellite transmission of DTH, DBS, and DARS, and submitted an MFN exception for those services. Communication from the United States, *List of Article II (MFN) Exemptions.* The FCC decided to apply an "effective competitive opportunities" test to applications to provide these services through all foreign satellite systems, whether or not they are systems of WTO Members. Non-U.S. Licensed Satellites providing Domestic and International Service in the United States, 12 FCC Rcd 24094, 24146 (1997) (*DISCO II Order*). S.376 would have the effect of exempting a privatized INTELSAT from this test.

services, but has been considering doing so with the U.S. market potentially playing a role in business plans. INTELSAT already provides through Comsat a variety of C-band and Ku-band services in the United States. These services are available in over 90 countries on a direct access basis -- that is, directly from INTELSAT rather than only through the signatories. Upon the urging of major U.S. users of INTELSAT services, the FCC initiated a proceeding to consider the merits of requiring direct access in the United States. The FCC made no tentative conclusions on whether to permit direct access and the proceeding is pending.

S.376 repeals various provisions of the 1962 Satellite Act upon the date of enactment. We believe that all provisions of the original 1962 Act will be unnecessary upon privatization of INTELSAT and, therefore, their repeal could safely take effect at that time. Pending privatization, however, we believe that, in view of the substantial responsibility placed on Comsat as the U.S. signatory in carrying out U.S. policy, it would be beneficial to retain certain provisions providing for Executive branch and FCC oversight of Comsat.[5] We agree that other provisions in the 1962 Act might then be repealed immediately upon enactment of new legislation. These would include those provisions of the 1962 Act that place limitations on the ownership of Comsat. They also would include current requirements that Comsat obtain FCC approval to raise debt or issue stock. These restrictions do not appear to have a valid purpose for 1999 and serve to restrict unnecessarily Comsat's ability to remain competitive in an industry requiring extensive and sustained capital investment.

Finally, we suggest that the Subcommittee consider the significance of retaining a privatized INTELSAT in the United States. Retention of the INTELSAT organization in the United States may prove beneficial to the United States in light of the historical role of the

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[5] We recommend that pending privatization of INTELSAT, Section 201(a) and (c)(1)(2)(11) and Section 403 be retained in the 1962 Act.

United States in creating the INTELSAT system and the ongoing role of the United States as a leader in global satellite communications.

## Conclusion

Legislation, such as S.376, based on pro-competition principles and on the current and projected state of satellite telecommunications in the world is important. The 1962 Satellite Act was created to achieve global communications connectivity via a then-developing technology and to satisfy U.S. national interest goals. Today's concerns are different from those that guided policymakers in 1962. The WTO Agreement and the accompanying Reference Paper signal that the days of state-sponsored service providers are numbered. We look forward to working together to ensure that any future privatization efforts promote the parallel goals of universal access and competition in satellite services for users everywhere. Both of these goals are achievable and we are eager to implement such legislation once your efforts have been completed.

Privatization of INTELSAT and Inmarsat is critical to bringing about real competition in international satellite communications, particularly in the developing world. As Chairman Burns aptly stated, "We need to ensure that satellite technology will continue to provide quality service, and we need to spur innovation. The best way to accomplish both of these goals is privatization. The private sector has always spearheaded technological leaps and I think our first steps into the next century should be quantum leaps deeper into the Information Age."

Your efforts, as well as the changes underway in the INTELSAT and Inmarsat, not only will greatly impact the future of the treaty-based organizations, but will set the stage for further liberalization in countries around the world. Congressional action will help promote an open, competitive marketplace.

We look forward to continuing working with you on these important satellite policy issues.